

THOMAS P. DINAPOLI
COMPTROLLER



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ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

August 4, 2014

Mr. Thomas F. Prendergast
Chairman and Chief Executive Officer
Metropolitan Transportation Authority
347 Madison Avenue
New York, NY 10017

Re: Time and Attendance Practices of
Selected Metropolitan Transportation
Authority Employees
Report 2011-S-45

Dear Mr. Prendergast:

Pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law, we audited the *Time and Attendance Practices of Selected Metropolitan Transportation Authority Employees* for the period January 1, 2009 through July 31, 2011.

Background

The Metropolitan Transportation Authority (MTA) is a public benefit corporation providing transportation services in and around the New York City metropolitan area. One of the largest transportation operators in the western hemisphere, the MTA serves about 2.5 billion riders annually through its seven constituent agencies, which include New York City Transit (Transit), the Metro-North Railroad (Metro-North), and the Long Island Rail Road (LIRR).

In a prior audit entitled *Management and Control of Overtime Costs* (Report 2009-S-88), we identified dozens of MTA employees who were paid significant overtime compensation without the required supporting documentation and/or supervisory approvals. As a result, we initiated a series of forensic audits of the MTA's overtime and other payroll-related practices. This audit, a part of that series, focuses on the time and attendance of certain employees of the LIRR.

Each MTA agency requires its employees to document their hours worked. Work hours are supported by various documents including tour schedules, sign-in and sign-out sheets, time clocks, and KRONOS (an electronic "touch" timekeeping system). Each agency uses one or more of these mechanisms.

Results of Audit

We found significant discrepancies between the time and attendance records maintained by employees of LIRR's Richmond Hill Shop when compared with their work production records for the same periods. We also identified several MTA employees who work and reside in New York City during their respective work weeks who are reporting that they reside outside of New York City and avoiding New York City income tax.

Richmond Hill Shop

The LIRR's Richmond Hill Shop employees are responsible for maintaining the safety and mobility of LIRR trains. Overtime earnings for shop employees totaled \$6.647 million for 2010. Shop employees each maintain a work log indicating their individual assignments and the number of hours worked on each assignment.

In June 2010, LIRR paid 41 car repairmen for 7,558 hours worked, equating to \$271,002. Yet, their collective work logs denoted only 1,437 hours worked. Using their aggregate average salaries, these employees appear to have been paid for 6,121 hours of idle time, costing the MTA \$219,476 without any tangible benefits.

Similarly, in July 2010, LIRR paid 40 car repairmen for 9,449 hours worked, equating to \$356,588, while their collective work logs for this period supported only 1,244 hours. Here, too, these employees were paid for 8,205 hours of idle time, costing the MTA \$309,604. For both June and July, their idle work hours totaled 14,326 equating to \$529,080. The hours paid include both straight time and overtime.

For example, the work history log for one of these employees shows that he was productive for only six hours during the two-day period July 1 - 2, 2010. However, he was paid \$1,745 for 56 hours worked. (Overtime pay calculations are done in hours as opposed to dollars, so you can have more than 24 hours in a day.) This employee was allowed to remain on the clock continuously and his electronic timekeeping entries at the start and end of each shift were actually made by his supervisor - not the employee. We note that he filed for retirement shortly after we started questioning the Shop's timekeeping practices. He is receiving an annual pension of \$110,666 as a result of his base salary and accumulated overtime earnings.

We interviewed the Richmond Hill Shop supervisors regarding these time and attendance discrepancies and were told that Shop employees are frequently in a "ready room" awaiting work assignments, and that is why their work production records do not account for the total hours they are paid for. If the supervisors are correct, Shop employees are spending considerably more time waiting for assignments than actually working. Further, if this practice is commonplace, it is wasteful and represents an abuse of taxpayer dollars. We are particularly concerned because employees in this work unit have earned a significant amount of overtime.

Recommendations

1. Investigate the discrepancies we identified between the recorded hours worked and the hours paid for Richmond Hill Shop employees. Perform a similar review for periods outside of our review period and recover overpayments as appropriate.
2. Ensure that Richmond Hill Shop employees have enough work to fill their scheduled hours and reduce overtime as appropriate.

Long Distance Commuters

The majority of MTA employees live within and around the New York metropolitan area. However, during the course of our data analyses, we identified seven MTA employees whose reported residences were significantly beyond the New York metropolitan area and used either post office boxes or the address of another MTA employee for mailing purposes. Six of these individuals reportedly resided in Delaware, and one individual's home address was in Florida.

We followed up with these individuals to determine whether they were actually commuting from those out-of-state residences on a daily basis, and whether their long-distance commutes negatively affected their time and attendance. We determined that six of them admitted to residing in New York City for the majority of each week to commute to and from work. The seventh employee, whose permanent address is in Delaware, stated that he commutes daily to and from Delaware (two-and-one-half hours each way) but acknowledged that he does maintain a home on Staten Island.

New York City-based employees have been known to use addresses that are located outside the city to avoid the NYC resident income tax. Since six of the sampled employees all admit to residing in NYC during the work week - and it is possible that the remaining employee does, in fact, reside in Staten Island during the week - for tax purposes they are considered residents of New York State and City.

We obtained copies of the W-2 (tax reporting) forms for these individuals and confirmed that these employees did not have any New York City income tax withheld from their paychecks during calendar year 2010. During 2009 and 2010, these employees had aggregate taxable salaries totaling \$1.3 million. Applying the minimum NYC resident income tax rate of 3 percent, we estimate these employees avoided at least \$37,000 in NYC income tax by reporting false full-time residences.

We are referring the names of these individuals to the Comptroller's Division of Investigations for the appropriate follow-up action and possible referrals to the taxing authorities.

Recommendation

3. Formally review the residency status of the seven employees reportedly residing outside the Metropolitan area and revise their home addresses and New York City tax deductions as

appropriate.

Audit Scope, Objectives and Methodology

The objective of our audit was to determine whether the time and attendance-related records prepared by, and maintained for, selected LIRR employees reflect their actual time worked based on existing controls, independent records, and auditor observations. To accomplish our objective, we interviewed relevant MTA and LIRR officials and staff, and reviewed relevant policies, procedures, regulations, and employee labor agreements. We selected the time and attendance records for a sample of employees in a work unit that had patterns of significant overtime. We traced their reported overtime to sign-in and sign-out records, where available, and any independently prepared documents evidencing work production. We also performed unannounced site visits to determine whether the sampled employees were actually at work during their scheduled tours.

We conducted our audit in accordance with generally accepted government auditing standards. 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 during this audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits.

Reporting Requirements

We conveyed the matters contained in this report to MTA LIRR and NYC Transit officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of the report.

In their response, LIRR officials indicated that they have taken actions to implement our recommendations and certain actions are ongoing. LIRR officials also questioned some of our audit's methodologies and observations. Our rejoinders to certain comments by LIRR officials are included in the report's State Comptroller's Comments.

Also, NYC Transit officials indicated that they are looking into the residency issues we identified in our report, and they agreed to take action as appropriate.

Within 90 days after final release of this report, as required by Section 170 of the Executive

Law, the Chairman of the MTA shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Major contributors to this report were Michael Solomon, Randy Partridge, Sal D'Amato, Lisa Duke, Lidice Cortez, Jay Gwak, Elijah Kim, Anthony Cartusciello, Joseph Fiore, Patrick Lanza, and Frank Smith.

Sincerely,

Frank P. Patone, CPA
Audit Director

cc: Michael Fucilli, MTA Audit
Patrick Nowakowski, LIRR

Agency Comments

347 Madison Avenue
New York, NY 10017-3739
212 878-7200 Tel
212 878-7030 Fax

Thomas F. Prendergast
Chairman and Chief Executive Officer



Metropolitan Transportation Authority

State of New York

June 25, 2014

Mr. Frank P. Patone, CPA
Audit Director
The Office of the State Comptroller
Division of State Government Accountability
123 William Street - 21st Floor
New York, NY 10038

Re: Draft Report #2011-S-45 (Time and Attendance Practices of Selected MTA Employees)

Dear Mr. Patone:

This is in reply to your letter requesting a response to the above-referenced draft report.

I have attached for your information the comments of both Mr. Patrick A. Nowakowski, President, Long Island Rail Road, and Mr. Carmen Bianco, President, NYC Transit which address this report.

Sincerely,

A handwritten signature in black ink, appearing to read "T.F. Prendergast".

Thomas F. Prendergast
Chairman and Chief Executive Officer

Attachment

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Metro-North Railroad
MTA Bridges and Tunnels

MTA Capital Construction
MTA Bus Company

Jamaica Station
Jamaica, NY 11435-4380
718 558-8252 Tel
718 657-9047 Fax

Patrick A. Nowakowski
President



June 13, 2014

Mr. Tom Prendergast
Chairman and Chief Executive Officer
Metropolitan Transportation Authority
347 Madison Avenue
New York, NY 10018

**RE: New York State Comptroller's Request for Response
Time and Attendance Practices of Selected MTA Employees –
2011-S-45**

Dear Chairman Prendergast:

As required by Section 170 of the Executive Law, detailed below is the LIRR's response to the State Comptroller's Audit of Time and Attendance Practices of Selected MTA Employees. The LIRR welcomes suggestions to further strengthen its management oversight and this response contains a status report on the actions the LIRR has taken to address the issues raised by the OSC. This response also clarifies several apparent misunderstandings on the part of the auditors regarding the time and attendance process and the systems the LIRR employs to manage work assignment and compensation.

Recommendation No. 1

- Investigate the discrepancies we identified between the recorded hours worked and the hours paid for Richmond Hill Shop employees. Perform a similar review for the periods outside of our review period and recover overpayments as appropriate.

LIRR Implementation Status: *Implemented and On-Going*

Status:

LIRR employees should be paid only for time that they work, and the LIRR will continue to employ a variety of actions to ensure that this takes place. That having been said, the basis for this recommendation appears to be founded on a fundamental misunderstanding on the part of the OSC auditors. The OSC's finding was based on a comparison of data captured by the Rolling Stock Maintenance System (RSMS) and the Corporate Time and Attendance Systems (CTAMS). The purpose and content of these two systems is different, and as noted in LIRR's October 2011 response to the preliminary draft report, the data captured in RSMS cannot be correlated with data captured in CTAMS. The purpose of RSMS is to capture maintenance information on

* Comment 1

MTA Long Island Rail Road is an agency of the Metropolitan Transportation Authority, State of New York
Thomas F. Prendergast, Chairman and Chief Executive Officer

*See State Comptroller's Comments, Page 12

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our rolling stock. It contains generic estimated times associated for certain repairs that do not include troubleshooting, delivery of parts, diagnostic work performed, running repair, acquiring tools/parts, performance of periodic and calendar day inspections, completion of inspection forms and other required FRA forms, lunch, breaks, cleanup etc... RSMS identifies "wrench time" only. The purpose of CTAMS is to capture employee time and attendance. It records employee attendance, the department/gang which the employee is working in, rate codes signifying the employees' rate of pay and budget strings. Since the two systems were designed for completely different purposes, they are not meant to match.

Additionally, contrary to information contained in the OSC report, each employee is not required to maintain a "work log." Defect Repair Sheets are usually completed by one employee for the work completed by one or more employees. Additionally, the information from the Defect Repair Sheets is entered into RSMS.

These issues notwithstanding, the LIRR conducted its own audit for the same time period covered in the report and is confident that the employees in question were correctly compensated for time worked based on management authorization and in accordance with their Respective Bargaining Agreement. During the review LIRR discovered several factual errors with respect to the information noted by the auditors in the June and July 2010 reports as follows:

- For the month of June 2010 there were four individuals, who due to bidding/bumping, worked only a portion of their time at the Richmond Hill Shop.
- For the month of July 2010 there were four Richmond Hill employees who earned overtime at another location.
- One employee was inadvertently counted twice in the June and July reports. This same employee is incorrectly shown as earning double time.
- One employee in the July report was incorrectly noted as having earned double time.

A similar review of a more recent time period is currently in progress.

Further, there is a statement in the report noting "This employee was allowed to remain on the clock continuously and his electronic timekeeping entries at the start and end of each shift were actually made by his supervisor – not the employee." This statement is inaccurate. The time card identified that on the dates noted in the report the employee had a biometric punch in for the start of the shift and a punch out at the end of the shift. The edits made to the time card by the supervisors were account transfers and edits to round punches to ensure the employee would not be compensated for punching in early for his shift and rounding hours for 10 minute wash up times. These edits are required and are in accordance with the departmental time and attendance policy for supervisors. This too was communicated to the auditors in 2011.

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Recommendation No. 2

- Ensure the Richmond Hill Shop employees have enough work to fill their scheduled hours and reduces overtime as appropriate.

LIRR Implementation Status: *Implemented*

Status:

The LIRR ensures that Richmond Hill employees have enough work to fill their scheduled hours and reduce overtime as appropriate. Richmond Hill Car Repairman craft employees work both in the Sheridan Shop and the Storage Yard. The same personnel staff both operations. Each operation is budgeted for the type and amount of work required in the area. The shop is staffed to conduct federally mandated periodic inspections, periodic service, & repairs resulting from those inspections, and running repair of failed equipment at a level that supports our daily car requirement. The Storage Yard operation is staffed at a level to perform mandated daily inspections and repair of service train consists, support necessary drill moves, troubleshoot reported problems, and assure that the trains depart on schedule.

As noted in the report, employees will at times report to the "ready-room" at the beginning and end of their shifts; however the amount of time in the "ready-room" varies from employee to employee and is minimal. The purpose of the "ready-room" is to have specific locations where employees are required to wait for their next assignments, equipment movements, or safety and/or job briefings.

The LIRR recognizes that audits can provide important recommendations and insights for strengthening LIRR operations and maximizing productivity and efficiency. While it believes its action plan addresses the recommendations of the State Comptroller's Office, it will continue to explore additional ways to strengthen the process. Please contact me should you require additional information.

Sincerely,



Patrick A. Nowakowski
President

Mr. Tom Prendergast
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c: M. Young
M. Gelormino
W. Norwich
J. Calderone
D. Cleary
J. Rosado
M. Fucilli
D. Jurgens
Pres. Log #

Memorandum



Date June 12, 2014

To Thomas F. Prendergast, Chairman & CEO, MTA

From Carmen Bianco, President 

Re NYS COMPTROLLER REPORT #2011-S-45

This is in reference to NYS Comptroller Report #2011-S-45 entitled, Time and Attendance Practices of Selected MTA Employees. Although this audit did not identify timekeeping discrepancies pertaining to any NYC Transit employee, it identified five Transit employees who reportedly resided outside New York City and failed to have local income tax withheld. The report recommended that NYC Transit review the residency status of these employees, and revise their home addresses and New York City tax deductions as appropriate.

We have determined that two of the employees identified by the auditors are no longer in the employ of NYC Transit and another has been on long-term leave since October 2013. The Special Investigations & Review Division will interview the other NYC Transit employees identified in the report and require that they complete New York State Withholding Allowance Certificates (IT-2104).

cc: M. Fucilli

State Comptroller's Comments

1. During our audit, Richmond Hill Shop employees explained the purposes of the two reports in question, which are both accurately described on page 2 of our audit report. Further, we acknowledge that the hours accounted for by the two reports often differ due to time spent in ready rooms and other factors. Nonetheless, it is reasonable to assume that the majority of the hours for which an employee is paid relate to the performance of primary duties, specifically maintaining and repairing rolling stock. Thus, we maintain that comparing an employee's work activity log to his/her official time and attendance record is a sound way to assess an employee's relative productivity and down time. Further, we believe that LIRR management should periodically conduct such analysis to assess staffing needs and help ensure that employees are optimally productive. Also, when performing our comparison of activity logs to the time and attendance records, we used the high end of time estimates for performing standard repair and maintenance tasks. For example, if a particular job was estimated to take between one to two hours, we used two hours as the amount of productive time. Thus, the actual amount of under-productive and/or unproductive time could have been greater than what we estimated.
2. Our report does not specify the person responsible for preparing the production reports (work logs) - only that the logs are maintained for Shop employees.
3. The part-time status of the employees noted by LIRR officials was already taken into consideration when we performed our comparisons and analysis of RSMS and CTAMS data. Further, based on the information provided by the LIRR in its response, it is unclear what (if any) significant impact these matters (including the errors in LIRR records) had on our analysis. The fact remains that the Shop incurred payroll costs for significant amounts of under-productive and/or unproductive hours, as detailed in our report. Also, we encourage LIRR officials to take the steps necessary to ensure that record-keeping errors, such as those detailed in the LIRR's response, are prevented in the future.
4. Our report is correct. The Richmond Hill supervisor we interviewed not only informed us that supervisors have the ability to punch in for their employees, but he showed us the specific entries he made for one of the employees we reviewed. Based on our review, we concluded that Shop employees are required to punch in at the beginning of each shift and out at the end of each shift - even if they are working overtime that commences at the end of a regular shift. The supervisor told us he punched the clock several times for the employee in question so the employee would not be interrupted while he was doing work during his multi-shift tour.