



# Niagara Frontier Transportation Authority

## Years of Double Dipping by Transit Police Officers

Report 2010-S-26



Thomas P. DiNapoli



# State of New York Office of the State Comptroller

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## Division of State Government Accountability

September 27, 2010

Henry M. Sloma  
Acting Chairman  
Niagara Frontier Transportation Authority  
181 Ellicott Street  
Buffalo, New York, 14203

Dear Mr. Sloma:

Our audit concluded 11 police officers doubled dipped on their time and attendance by supposedly working one or more jobs at the same time they were being paid to work at the Niagara Frontier Transportation Authority.

This double dipping was allowed to occur for several years because senior level police officers condoned and participated in this fraudulent activity. As a result, the citizens of Erie and Niagara counties did not have the police coverage that was planned and paid for.

We urge Transportation Authority officials to change the culture in the police department. Transportation Authority officials should also properly monitor to ensure officers are working their shifts and in the locations they are assigned.

We provided our findings to the Office of the State Comptroller's Division of Investigations for referral to law enforcement for possible criminal prosecution.

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*



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## State of New York Office of the State Comptroller

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### EXECUTIVE SUMMARY

#### Summary

For years, senior level police officers in the Transportation Authority have condoned, and participated in cheating the public out of a full-day's work. Police officers have abandoned their assigned duty posts to go to work at other jobs while being paid by the Authority. We identified 11 officers "double dipping" over a three year period.

One of the officers involved in this practice, Captain Marty Jones, was also the Department's internal affairs officer during the time he was double dipping. Most of the police officers involved were the top overtime earners within the department. In one of the more egregious examples, Lieutenant John Herritage claimed he was working 26 hours during a day!

In July 2009, the Transportation Authority received an anonymous complaint alerting them to the improper practices that were occurring within its police department. The Executive Director asked the then Chief of Police and the Internal Auditor to jointly investigate the allegation. Unfortunately, the Chief and the Internal Auditor designed their review to limit the full discovery of the extent of the cheating problem, which extended into the management ranks of the police department. Their investigation identified double dipping by only five officers. Without doing a thorough review, the former Chief discussed this matter with the Erie County District Attorney who, according to the former Chief, declined to pursue it further. The former Chief then decided how four of the five officers would be disciplined. The fifth officer was not disciplined.

While the current Chief, George Gast, has made some changes in controlling off-duty employment, we believe it is also important that the tone at the top must consistently reinforce that double dipping is not to be tolerated. Police officers must be ever vigilant and diligently work to protect the public they serve by making sure that all officers are available for the full duration of their assigned shift. We encourage the Board of Directors to work to assure the tone at the top of the police department is appropriate and is particularly responsive to time and attendance abuses.

We have provided our findings to the Office of the State Comptroller's Division of Investigations for referral to law enforcement for possible criminal prosecution. We have also referred our findings to the Office of the State Comptroller's New York State and Local Retirement System for a determination on how the findings may affect the pension of these eleven officers.

This report, dated September 27, 2010, is available on our website at:

<http://www.osc.state.ny.us>.

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Division of State Government Accountability

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## Background

The Transit Authority Police Department was established in 1984, by the Niagara Frontier Transportation Authority, to ensure the safety and security of the public transportation system for Erie and Niagara counties. Over the years, the Department's responsibilities have expanded to support other Authority properties, including the Buffalo Niagara International Airport, Niagara Falls International Airport and the Transportation Authority Boat Harbor.

All Transit police officers are certified by the New York State Bureau of Municipal Police Training. The Department currently has 100 sworn officers. Transit police officers have the authority to exercise police powers and duties, as provided under New York State law.

The Transit Police headquarters is located at 1404 Main Street in the City of Buffalo, with sub-stations located at the following locations:

- Buffalo Niagara International Airport
- Niagara Falls International Airport
- Metropolitan Transportation Center, Buffalo
- Niagara Falls Transportation Center
- All underground Metro Rail Stations
- NFTA Boat Harbor

On July 14, 2009, the Transportation Authority received an anonymous letter from within the Police Department alleging Transportation Authority supervisory police officers, as well as a few officers, were being signed in for overtime while working a second job and were working triple consecutive shifts and no-show shifts. The letter contained specific information as follows:

- Police officers, including supervisors, have worked for the City of Buffalo Board of Education at school athletic events on Thanksgiving Day while being signed in for their regular scheduled shifts with the Transportation Authority
- Supervisors have signed in for overtime, while being on the clock as security officers for the Erie County Community College
- One Supervisor has been working three consecutive shifts in a 24 hour period, two of these shifts being paid at overtime rates

The author of the letter stated these practices had been observed by other members of the Police Department and the activities were illegal and dangerous. The letter was also sent to the New York State Department of Civil Service, New York State Attorney General's Office, local news channels, as well as the New York State Comptroller's Office.

The Transportation Authority did an internal investigation into the allegations in July 2009. The Authority's Executive Director Lawrence Meckler instructed the former Chief of Police Joseph Riga and the Director of Internal Audit, Patrick Dalton, to jointly investigate the allegations. Chief Riga investigated the allegations about the Board of Education and the three consecutive shifts, while Mr. Dalton investigated the Erie County College allegation.

Chief Riga's investigation found the allegations to be true. He found two police officers, Captain Marty Jones and Officer Thomas Losi, were double-dipping on Thanksgiving Day in 2008 by working a Buffalo Board of Education athletic event while on duty for the Transportation Authority. During Mr. Riga's investigation, three of the four officers who were questioned told him the practice had been going on for the past several years. However, the Chief did not expand his investigation into the other years. The Chief also found a Lieutenant was working a number of triple shifts because of the absence of other supervisors.

Mr. Dalton found the allegations to be true regarding officers being signed in at two employers at the same time. He found two officers were signed in at the Transportation Authority and Erie County Community College at the same time: Lt. John Herritage on 32 occasions and Officer Mark Martinelli on 181 occasions between 2007 and 2009. Erie County Community College managers took action and fired the two officers.

Mr. Dalton expanded his testing by contacting other selected employers, obtaining timesheets, and testing if the abuses were occurring. He found Officer David Krzemien was signed in at the Transportation Authority and the Village of Blasdell Police Department at the same time. Despite this finding, the police officer was not disciplined.

Former Chief Riga told us he contacted the Erie County District Attorney on July 29, 2009 to advise him of this matter. Chief Riga told us, however, that the District Attorney said his office was not interested in pursuing this as a criminal matter. Therefore, the four officers were internally disciplined and suspended without pay.

We began our audit in January 2010 and reviewed the Transportation Authority's internal investigation. We found a number of limitations with the internal investigation, as follows:

- Lack of independence - Executive Director Meckler asked Chief Riga to investigate the allegations jointly with the Director of Internal Audit – Patrick Dalton. However, the Chief is the one who oversees the unit where the abuses were alleged to have occurred. Because he supervises the police officers, he didn't have sufficient independence to do an objective review. This was evidenced by his willingness to limit the scope of his review.
- Limited scope - The Chief and the Director of Internal Audit looked only at one Buffalo Board of Education event, which was the one alleged in the letter - even though the Buffalo Board of Education has employed 13 transit police officers since 2006 and these officers have worked routinely for the Buffalo Board of Education throughout the school year. Even after Chief Riga found two officers were double-dipping while on duty at the Transportation Authority, he did not expand the investigation to determine if the abuses were occurring on other dates. Additionally, the officers told the Chief they double dipped in prior years. Chief Riga told us he did not look further because he claimed the union contract prevented officers from being disciplined for actions that occurred more than a year ago. Contrary to the Chief's contention, criminal acts are not subject to the year limitation under the contract.

Further, we asked Mr. Dalton, once he knew of the abuses, if he went to any of the athletic events to see which police officers were working. He said it was too far from his home.

A comprehensive review should have been done to determine the extent of the abuses. If Chief Riga and Mr. Dalton had expanded the tests, they would have found more officers participated in the abuses and the abuses were on-going for at least the three-years we reviewed. It is likely management would have taken a different disciplinary approach had they known the true extent of the abuses.

Finally, Mr. Dalton did not look into all of the allegations in the letter, even after two of the allegations were found to be true. He did not test to determine if the 'no-show' allegation was valid.

### **Years of Double Dipping**

We expanded the review of the police officers' second employment. Many of the Transit police officers have second jobs they are allowed to work when they are off-duty from the Transportation Authority. All second employment is supposed to be approved by the Chief of Police.

Thirty-eight of the 106 officers have second jobs that the Transportation Authority knows about. The Buffalo Board of Education employed 13 of the Transit Officer's since 2006. These officers provided security at the various High School athletic events.

We compared the Transportation Authority's work schedules and timesheets to the Buffalo Board of Education's employment payment records and found nine police officers from the Police Department's Rail Division were working for the Buffalo Board of Education while on duty at the Transportation Authority. This occurred on five occasions (*3 Harvard Cup football games and 2 McKinley basketball games*) between November 2006 and November 2008.

The double-dipping occurred on the following occasions:

*Thanksgiving Day Harvard Cup Football Game 2006, 2007, 2008*

- Over a three-year period we found nine officers were working for the Buffalo Board of Education's Harvard Cup Football Game while they were supposed to be on patrol for the Transportation Authority. This occurred on Thanksgiving Day in 2006, 2007, and 2008.

The number of officers that participated in the double-dipping each year is as follows:

Year	Number of Officers Double Dipping	Officer	Percent of Shift Double Dipping
2008	2	Captain Jones Officer Losi	12%
2007	7	Captain Jones Lieutenant Herritage Officer Losi Officer Alvarado Officer Lewis Officer Livecchi Officer Cordero	41%
2006	7	Captain Jones Lieutenant DiFranco Officer Losi Officer Livecchi Officer Lewis Officer Capretto Officer Cordero	44%

High ranking officers were involved, as well as the officers they supervised. Captain Jones of the Police Department double dipped on Thanksgiving Day in all three years. The Captain is the highest ranking officer besides the Chief of Police. Also double-dipping were Lieutenants Herritage and DiFranco, and six police officers.

The double-dipping worked because the supervising officers and their staff participated in the scheme and were personally benefiting. As required by their union contract, working an 8 hour holiday shift at the Transportation Authority earns officers pay at holiday rates. In 2008, Captain Marty Jones was paid \$1,157 (including fringe benefits) for his Thanksgiving Day shift at the Transportation Authority, while being paid \$28 per hour (total pay of \$168) by the Buffalo Board of Education.

All of the officers were assigned to the day shift (most from 7 am to 3 pm) at the Transportation Authority. They were paid for security at the Harvard Cup from 9 am to 3 pm. Also, most of the officers were assigned to areas near the location of the Harvard Cup Game. The game is located near the two rail stations and bus lines that are safety concerns due to the large volume of students. Transit Police routinely monitor this area.

*Two-Day McKinley Basketball Tournament December 2007*

- Three police officers worked the Buffalo Board of Education's McKinley Basketball Tournament when they were supposed to be on patrol for the Transportation Authority. All three officers double-dipped on the first day of the tournament and two double-dipped on the second day.

	<b>Officers Double-Dipping</b>
Day 1	Captain Jones  Lieutenant Herritage  Officer Losi
Day 2	Lieutenant Herritage ( <i>serving as "Acting Chief"</i> )  Officer Losi

On the first day of the basketball tournament, Captain Jones, the second highest ranking officer at the Police Department, participated in the double-dipping, along with two officers that reported to him.

On the second day of the tournament, Lt. John Herritage, the highest ranking officer on duty at the Police Department participated in the double-dipping. The Lieutenant was serving as the “Acting Chief” for the Transit Police Department. According to Chief Gast, the role of “Acting Chief” is given to those officers that are well respected within the police department and can be depended on. However, Lt. John Herritage, who was given the privilege of “Acting Chief,” saw no problem with being away from the Police Department and collecting pay from two employers at the same time.

Also, because of the additional responsibilities of assuming the role of “Acting Chief,” Lt. John Herritage was collecting pay at a higher rate (out of class pay) while in the role of “Acting Chief” from the Transportation Authority. For the two days Lieutenant Herritage double-dipped he earned \$1,335 (including fringe benefits) from the Transportation Authority, while being paid \$20 per hour by the Board of Education.

Because top ranking police officers are involved, management needs to assess the quality and ethics of the officers working for the Police Department. Officers are supposed to uphold the law and demonstrate ethical behavior.

#### *Four Jobs for Double-dipping Lieutenant*

In addition to Lieutenant Herritage’s full-time job at the Transportation Authority, he had three more jobs (Erie Community College, Board of Education, and US Security) during the years we reviewed. The former Chief of Police approved these off-duty employment jobs. We reviewed the time and payment records from three of the four employers and found:

- On 13 days, between 2006 and 2009, the Lieutenant received payment for working three jobs in one day. One of these jobs was his full-time Transportation Authority job. Based on the work hours and duties of his other jobs, we question whether he worked all three jobs in one day. We believe he double dipped as he did on the Harvard Cup football game and at the McKinley basketball tournament.

Below is an example of one of the 13 days when he worked three jobs in one day:

Employer	<b>Tuesday Jan 13, 2009</b> Hours of work
Transportation Authority	7 am to 4 pm
Erie Community College	4 pm to 10 pm
Buffalo Board of Education	paid for 4 hours work

Although the payment information from the Buffalo Board of Education did not have the work hours for the weeknight games, the Acting Director of Security and Chief of Staff at the Buffalo Board of Education told us the games paid for were in the afternoons - after school. Also, Lt. Herritage was signed in at the Transportation Authority and Erie Community College at the same time (4 pm). Lt. Herritage was signed in at the Transportation Authority and the Erie County Community College at the same time on 32 occasions between 2007 and 2009.

- The Lieutenant was paid for 26 hours of work on the same day by three of the employers as follows:

December 28, 2007

Employer	Hours paid	Number of hours paid
Transportation Authority	Midnight to 7 am	7 hours
Transportation Authority	7 am to 3 pm	8 hours
Buffalo Board of Education	Noon to 5 pm	5 hours
Erie Community College	4 pm to 10 pm	6 hours
Total		26 hours

The Lieutenant also worked 20.5 hours the prior day.

### *Double-dippers are High Overtime Earners*

The eleven double-dipping officers have base salaries between \$51,437 and \$62,959 in 2008. In addition to their salaries, the officers earn overtime. In 2008, the Police Department's total overtime was about \$1.9 million. Some of the eleven officers that double-dipped are also among the top overtime earners at the Police Department. For example, in 2008, the Captain earned \$61,530 in salary and an additional \$31,974 in overtime (for a total of \$93,504). Also, in 2008, Lieutenant Herritage earned \$62,959 in salary and an additional \$33,841 in overtime (for a total of \$96,800). Below are the salaries and overtime amounts the 11 officers earned in 2008.



Officer	Salary	Overtime	Total Compensation	OT Rank in Police Department
Officer Mark Martinelli	\$55,383	\$46,552	\$101,935	2
Officer Thomas Losi	\$52,183	\$34,958	\$87,141	8
Lieutenant John Herritage	\$62,959	\$33,841	\$96,800	10
Captain Marty Jones	\$61,530	\$31,974	\$93,504	13
Officer Victor Alvarado	\$57,042	\$30,830	\$87,872	17
Officer Michael Livecchi	\$51,715	\$30,683	\$82,398	18
Officer Richard Lewis	\$51,494	\$24,218	\$75,712	37
Officer Benny Cordero	\$52,048	\$21,607	\$73,655	46
Officer David Capretto	\$57,244	\$20,955	\$78,199	48
Officer David Krzemien	\$51,437	\$19,493	\$70,930	50
Lieutenant Michael DiFranco	\$61,924	\$919	\$62,843	*

\* Officer retired in January 2008

We presented to Chief Gast our preliminary findings on the officers who double-dipped. While the current Chief, George Gast, has made some changes in controlling off-duty employment, we believe it is also important that the tone at the top must consistently reinforce that double dipping is not to be tolerated. We encourage the Board of Directors to work to assure the tone at the top of the police department is appropriate and avoids similar time and attendance abuses in the future.

Crime statistics for the Buffalo area show a real need for police diligence, as well as the recent terrorist cell (Lackawanda Six) that was located there. NFTA recognizes the terrorism threat as demonstrated by the National Terrorism Threat Advisory that is contained on Transportation Authority's Transit Police website. On the same web page is also a link to the Homeland Security Live Alert information.

Since becoming Chief, Mr. Gast has implemented new procedures addressing the issue of second jobs, as follows:

- No off-duty employment will be approved which begins within 30 minutes of the end of an officers scheduled shift; and
- Outside employers will be contacted by the Transit Police Department and advised as to the policies and the procedures of the Department including: the limit of 20 hours per 5-days of off-duty employment, the regularly scheduled shifts of the respective officers, and the allowed starting time of the off duty employment.



- Recommendations**
1. The Chairman should appoint a committee to properly investigate time and attendance abuse in the Transit Police Department.
  2. Take action against the police officers involved in the double dipping.
  3. The Executive Director needs to change the culture in the Transit Police Department.
  4. The Executive Director needs to periodically monitor the officer's second job work hours to ensure officers are not working a second job during Transportation Authority scheduled work hours.

**Audit Objective, Scope & Methodology**

Our audit objective was to examine allegations about the Transportation Authority's police officers raised in an anonymous letter received by the Office of the State Comptroller on July 17, 2009.

We did our audit according to generally accepted government auditing standards. Our audit scope was January 1, 2006 to April 27, 2010. To accomplish our objective, we reviewed the internal investigation done by the Transportation Authority on the allegations. We interviewed Authority officials and reviewed time records and employee schedules. We also reviewed the police officers additional employment forms. We obtained time records and purchase orders for security services from Buffalo Board of Education and Erie County Community. We interviewed the Chief of Staff and Acting Security Director at the Buffalo Board of Education and the Director of Human Resources at Erie County Community College. We attempted to interview the Transit Police Officers who double dipped. Their attorneys responded on their behalf and refused to allow them to meet with us.

**Authority**

We did this audit according to the State Comptroller's authority in Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

**Reporting Requirements**

We provided a draft copy of this report to Transportation Authority officials for their review and formal comment. We considered the Transportation Authority's comments in preparing this report and have included them in their entirety at the end of it. Transportation Authority officials agreed with our audit recommendations and indicate actions they have taken or will take to implement them. Transportation Authority officials questioned some of the statements made in the audit report. Our rejoinders to the Transportation Authority's response are included in our State Comptroller's Comments.

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

Frontier Transportation Authority will report to the Governor, the State Comptroller, and the leaders of the legislature and fiscal committees, advising what steps were taken to implement our recommendations, and fiscal committees, advising what steps were taken to implement our recommendations, and if recommendations were not implemented, the reasons why.

**Contributors  
to Report**

Major contributors to this report include David R. Hancox, Melissa Little, Suzanne Mazone, Eileen Chambers, Thalia Melendez, Meredith Holmquist, and Devisha Baldeo.

## Agency Comments



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*Serving Buffalo Niagara*

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September 13, 2010

David R. Hancox, CIA, CGFM  
Director of State Audits  
State of New York  
Office of the State Comptroller  
110 State Street  
Albany, NY 12236

Re: Draft Audit Report (2010-S-26)

Dear Mr. Hancox:

We are in receipt of your draft copy of the audit report. Thank you for the opportunity to comment before its final release.

As your report indicates, prior to the audit we took immediate action in 2009 as soon as we received the anonymous letter and within 60 days we had disciplined the Officers for their infractions. We took these actions in the context of the Collective Bargaining Agreement. The Collective Bargaining Agreement limits discipline for actions taken within a specific period of time. Your audit, along with our investigative findings, puts an emphasis on what will not be tolerated. We have not had any infractions since then and with the enhanced internal controls we have established, as listed below, we will ensure, to the greatest extent possible, that our employees act in a professional and ethical manner.

- No off-duty employment will be approved which begins within 30 minutes of the end of an officers scheduled shift.
- Outside employers will be contacted by the Transit Authority Police Department (TAPD) and advised as to the policies and procedures of the TAPD, including the limit of 20 hours per 5 days of off-duty employment, the regularly scheduled shifts of the respective officers and the allowed starting time of the off-duty employment.
- Annual audits will be conducted on attendance and outside employment that will be reported directly to the Board of Commissioners. In this manner, any employees violating the policies and procedures will be disciplined in a timely manner within the parameters of the union contracts.

Listed below are our responses to the audit recommendations.

**Audit Report Recommendations:**

1. The Chairman should appoint a committee to properly investigate time and attendance abuse in the Transit Police Department.

We concur and this recommendation was implemented prior to your audit. The Internal Audit Department, Executive Director and Police Chief have investigated the abuse and disciplinary actions were immediately taken. On a going forward basis, we have enhanced internal controls, the Internal Audit Department has been tasked with conducting annual audits on attendance and outside employment and reporting the findings directly to the Chairman and Board of Commissioners.

2. Take action against the police officers involved in the double dipping.

All officers that could be disciplined under the union contract, were suspended without pay in 2009 based on the investigation we conducted. The action to respond to this recommendation has been completed. Further, the former Chief and, the current Chief brought this matter to the attention of Erie County District Attorney (DA) who twice declined prosecution based on the information at that time.

3. The Executive Director needs to change the culture in the Transit Police Department.

We agree that a change in the culture of the Transit Authority Police Department is necessary and this occurred immediately following our investigation. We feel that changing corporate culture is everyone's responsibility. At the NFTA, our values statement includes "[w]e operate with integrity and high ethical standards" and that "we adhere to high standards of performance and accountability". These values are being reinforced not only with the Police, but also with all employees. These incidents that have led to a violation of our values, policies and procedures have been discussed with the police officers, supervision, Management Team and the Board. The tone has been set and our tolerance of violations will continue to be met with discipline, up to and including termination.

4. The Executive Director needs to periodically monitor the officer's second job work hours to ensure officers are not working a second job during Transportation Authority scheduled work hours.

We concur with the recommendation. As previously noted, annual audits will be conducted and spot checks will be made of officers to ensure they are where they are assigned while on duty at the NFTA.

Our additional comments and questions regarding the report content is as follows:

**Cover Letter:**

We concur with your facts that officers were found to be working two jobs at the same time, as noted in our investigation, and other entities were paying the officers for time while they were actually on duty for the NFTA. We did want to note that there are no records of missed calls or non-responses for service during the period covered by the audit. Fortunately, the public did not suffer from a lapse in coverage.

**Executive Summary Comments:**

On page 7, paragraph 2, Captain Marty Jones is not currently the Department's internal affairs officer. These duties were reassigned following our investigation.

**\***  
**Comment**  
**1**

On page 7 paragraph 3, leads the reader to believe that the investigation was intentionally limited for reasons other than contractual discipline. We suggest the wording be revised to read "The scope of the NFTA review, that was limited by contractual disciplinary rules, did not determine the full extent of the problem."

**\***  
**Comment**  
**2**

On page 7, in paragraph 4, the NFTA and Chief Gast strongly disagree with this statement. At no time did the current Chief defend the actions of the officers. Chief Gast's position is that, based on your interviews, and our discussions at the exit conference, is that the officers involved in these incidents were wrong, needed to be disciplined and were disciplined. At no point did the Chief state the officers were "good officers who simply made a mistake", nor did the Chief defend the officers involved or their actions.

**\***  
**Comment**  
**1**

There is no downplaying of this issue by the current Chief who, as you noted within your report, has made significant changes to the policies and procedures within the TAPD to ensure there is no repeat of these issues which took place well before he became Chief.

**Background:**

On page 9, paragraph 2, there is a factual correction: the TAPD has 100 sworn officers, including the Chief.

**\***  
**Comment**  
**1**

On page 10, paragraph 3, as a point of clarification, since the officers admitted to working in the other years, and that was prior to the period for which they could be disciplined, no further investigation was deemed warranted by the Chief at that time.

**\***  
**Comments**  
**2 & 3**

Included at the end of that paragraph is the statement, "[t]he Chief also found a Lieutenant was working a number of triple shifts because of the absence of other supervisors". This was not related to the "double-dipping" investigation, but rather to scheduling issues. This has been resolved.

**\***  
**Comment**  
**4**

On page 10, paragraph 5, Mr. Dalton did determine that Officer Krzemien was signed in at both the NFTA and the Village of Blasdell. However, he did not get paid for any time concurrent with the time worked at the NFTA and therefore is not subject to any disciplinary actions as he did not violate the union contract.

**\***  
**Comment**  
**5**

On page 11, "Lack of independence", the scope of the former Chief's review was limited because the DA was not willing to pursue a criminal investigation at that time and the discipline period is limited to one year. Your statement on the Chief's lack of willingness is not substantiated by these facts.

**\***  
**Comments**  
**2 & 6**

On page 11, "Limited scope", as your report noted the scope was in fact limited primarily due to two facts. The DA was not, at that time, willing to pursue criminal charges and, therefore, the only recourse we had to discipline these officers, as you noted, was in the one-year period allowed by the union contract.

**\***  
**Comment**  
**2**

On page 11, paragraph 2, the draft report states Mr. Dalton did not go to any athletic events because "it was too far from him home". In fact, during the investigation there were no athletic events for

**\***  
**Comment**  
**7**

\* See State Comptroller's Comments, page 25.

anyone to attend as schools were closed for the summer. Further, Mr. Dalton lives close to the city and, therefore, your reference does not make sense, nor does Mr. Dalton ever recall being asked the question, nor making that statement.

On page 11, paragraph 4, regarding the statement that Mr. Dalton, “did not test to determine if the ‘no-show’ allegation was valid” is not factual. The allegation was substantiated via the audit of the Erie Community College. Internal Audit determined that in many instances the officers were a “no show” at that location because they signed in at 3:00 p.m. when they were determined to be working for the NFTA until 4:00 p.m. Internal Audit expanded the scope of the review to other agencies in an effort to determine the extent of the problem. This was further substantiated by the information received from the Village of Blasdell.

\*  
**Comment**  
**8**

On page 16, paragraph 1 – We feel the entire paragraph should be deleted. There is a repeat of the verbiage on page 7 and the NFTA has been on the forefront of taking action with respect to terrorism. The NFTA has undertaken many security initiatives over the past five years that have greatly enhanced our security posture. We have aggressively pursued funds from many of the Department of Homeland Security grant programs resulting in becoming the largest Tier II grant recipient in the nation. The NFTA has used these funds in innovative ways to include the installation of advanced perimeter security systems at all of our surface transportation facilities and the doubling of CCTV cameras along with the inclusion of video analytics in the Rail system. This identifies just a few of the projects being spearheaded by the NFTA.

\*  
**Comment**  
**1**

In 2007 the NFTA developed, planned, and executed an explosive screening program in our rail system as a pilot for the Transportation Security Agency (TSA) and it has become a best practice across the US.

In 2008 the TSA was trying to identify new and innovative ways to secure airport perimeters. Funding was allocated and a competitive process was put in place allowing airports to put plans together that would identify new technologies and/or new initiatives that they wanted to undertake to accomplish this. The NFTA developed a white paper outlining a plan and submitted it to TSA. In 2009 TSA selected the NFTA’s plan and awarded the largest amount of funding in the nation for this effort. That project is currently underway and is expected to be complete by the end of 2011.

With assistance of ARRA funding, in 2010 the NFTA formed a Counter Terrorism Unit within our Police Department to focus specifically on antiterrorism operations in the Surface Transportation division. This unit consists of one Lieutenant, 4 antiterrorism officers and 2 K9 Teams that are assigned full time to this effort. They work closely with other law enforcement and intelligence agencies as well as regularly meet with community leaders and businesses along the rail and bus systems so that they are not only visible but have an opportunity to gather the most up to date information on what is happening in and around our transportation system.

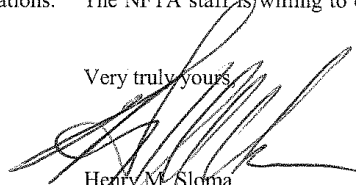
Many of the security improvements that the NFTA has made did not require additional funding such as changing our procedures and conducting training that allowed our employees to become more aware of the threats directed at transportation today which have greatly enhanced security. We have undergone extensive threat and vulnerability assessments by both TSA and FTA and have been identified as a leader when it comes to security initiatives.

There have been other initiatives and enhancements undertaken that cannot be discussed in an open document such as this. The NFTA has been a leader in antiterrorism and security and is recognized as such. Please see the enclosed correspondence from the U.S. Department of Homeland Security.

The subject of this audit is a serious matter that has been and will continue to be given the utmost attention by the Board and the Management of the NFTA. We consider audits to be learning tools, not only to achieve continuous improvement for our organization, but the reports may also serve to help other entities.

We understand that your staff will investigate the factual discrepancies and we would appreciate your consideration of our other observations. The NFTA staff is willing to discuss our responses with you at any time.

Very truly yours,

A handwritten signature in black ink, appearing to read 'H. Sloma', written over the typed name and title.

Henry M. Sloma  
Acting Chairman

HMS/cf  
Enclosure

cc: Patrick Dalton  
George Gast  
David M. Gregory  
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## State Comptroller's Comments

1. We have modified the final audit report based on the Transportation Authority's response.
2. As we stated on page 11, the scope of the Transportation Authority's review should not have been limited by contractual disciplinary rules. Criminal acts, such as the double dipping committed by the officers, are not limited to one year.
3. Because the Chief did not investigate further, he failed to discover the full-depth of the problem within the police ranks.
4. The allegation letter, which is summarized on page 9, covered allegations of double dipping as well as an officer working triple shifts.
5. The Internal Auditor's review cites 46 instances where the Transportation Authority paid this officer to work until 4:30 p.m. However, he signed in to work at the Village of Blasdell Police Department at 4:30 p.m. on each occasion. The Village of Blasdell Police Department is at least 15 minutes away by vehicle from the Transportation Authority.

Transportation Authority officials could not provide the OSC auditors with evidence that confirms the officer was, in fact, working at the Transportation Authority until 4:30 p.m. for any of the 46 instances. We stand by our statement.

6. Even though a crime may have occurred, the District Attorney may choose not to pursue the matter. That doesn't justify limiting the investigation. In fact, based on a full understanding of the matter, it might convince others to prosecute.
7. Mr. Dalton made this statement on January 26, 2010 in front of four OSC staff.
8. The "no show" allegation is separate from the allegation that officers are being paid to work for more than one entity at the same time. The Erie County Community College review found that officers were already signed in to work at Erie County Community College before their shift ended at the Transportation Authority. Neither Erie County officials nor Transportation Authority officials could prove whether the officers were working at the Transportation Authority during the overlap period or if they were working for Erie County Community College.

"No show" means the officers did not show up for their shift at all. The Internal Auditor did not perform audit tests to determine whether officers were not showing up at all for their shifts. In fact, on March 23, 2010 when we asked Mr. Dalton, the Internal Auditor, whether he had tested for "no shows," his response was, "How would you test for that?"