



Metropolitan Transportation Authority Metro-North Railroad

Forensic Audit of Select Payroll and Overtime Practices and Related Transactions

Report 2010-S-60



Thomas P. DiNapoli

This page is left intentionally blank.

Table of Contents

	Page
Authority Letter	5
Executive Summary	7
Introduction	9
Background	9
Audit Scope and Methodology	10
Authority	10
Reporting Requirements	10
Contributors to the Report	11
Audit Findings and Recommendations	13
Costly and Questionable Payroll Practices	13
Recommendations	18
Exhibit A	19
Agency Comments	21
State Comptroller's Comments	27

This page is left intentionally blank.

State of New York Office of the State Comptroller

Division of State Government Accountability

November 9, 2011

Mr. Jay Walder
Chairman and Chief Executive Officer
Metropolitan Transportation Authority
347 Madison Avenue
New York, NY 10017

Dear Mr. Walder:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our *Forensic Audit of Select Payroll and Overtime Practices and Related Transactions*. This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5, of the State Constitution and Section 2803 of the Public Authorities Law. This engagement was undertaken as a comprehensive forensic audit of overtime practices and payments, the first in a series, at the Metropolitan Transportation Authority.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

This page is left intentionally blank.



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objective

The objective of our audit was to determine whether high overtime earning workers in Metro-North Railroad's Hudson and Harlem Line Signal Construction Unit were appropriately paid.

Audit Results – Summary

We found that Hudson and Harlem Line Signal Construction Unit employees received costly and, in certain instances, potentially fraudulent payments due to long-term practices that may have been avoidable. In fact, for calendar year 2010, we determined that these practices cost Metro-North \$991,208 in overtime and \$216,128 in regular pay, and enriched certain staff and supervisors. (See Exhibit A.) In addition, these payments will inflate future pension payments for these employees by about \$5.5 million. (See Table, page 15.)

These payments occurred because of a pervasive culture of management acceptance of long-term practices, employee feelings of entitlement to additional compensation, and ineffective internal controls in Metro-North's payroll office.

Most of the Signal Construction Unit workers are covered under a federal statute governing "Hours of Service," which generally provides that employees can work up to 12 hours within a 24-hour period, and then they must be provided with at least 10 hours of rest time. Some labor agreements state that employees covered by the statute can receive Hours of Service payments for their required rest hours if those hours coincide with their regularly-scheduled work hours. When we reviewed calendar year 2010 payroll records for 30 Signal Construction Unit employees, we found that 28 of them were paid a total of \$216,128 in Hours of Service payments for hours that were not worked. These Hours of Service payments were the result of the scheduling of excessive overtime.

We determined that supervisors set work schedules so their employees worked 12-hour shifts overnight (collecting overtime pay for this time), which then forced the employees to go into the Hours of Service rest interval during their normally-scheduled work hours. Further, we found that supervisors included themselves in this scheduling arrangement, even though they do not appear to be covered by the statute. They do not perform job duties expressly set forth in the statute, and they have not prepared required federal records of compliance with mandated rest hours. We believe the action of the supervisors may potentially be fraudulent. However,

Metro-North officials disagree indicating that they were aware of and agree with the actions of the supervisors. However, as MTA officials also indicate in their response, OSC will confer and cooperate with the MTA Inspector General to determine if further action is necessary. In total, supervisors and their workers received \$991,208 in overtime during 2010.

A review of the overtime showed that these payments could have been avoided if supervisors scheduled regular work hours for some of the employees during the off-peak shifts. However, supervisors were some of the employees who were benefiting the most from these abusive practices, since they are senior employees nearing retirement whose pension payments would increase significantly as a result of the extra pay. In fact, one of the assistant supervisors who signed attendance records filed for retirement shortly after we started questioning Signal Construction Unit payroll practices. We estimated his annual pension is approximately \$61,700 and his lifetime pension benefits are \$1.5 million more than they would have been based on base salary alone.

We also found several inappropriate payroll practices relating to the Signal Construction Unit that posed a high risk for fraud. For example, assistant supervisors were signing attendance records for themselves as well as their employees even though there was no evidence that they worked the reported hours. Employees also claimed they were entitled to be paid for travelling from their job site to their home location at shift's end even though they did not travel. Further, certain costs relating to Hours of Service were allocated to projects where employees had no legitimate reason to work on the project. We believe that disbursing the costs to multiple projects was part of an overall strategy to minimize the chances that these inappropriate payroll practices would be detected. We plan on conferring with the MTA Inspector General as appropriate.

In response to our draft report, Metro-North officials agree with most of our report conclusions and recommendations. However, they do not agree that any frauds have been perpetrated by their staff.

Our report contains six recommendations for stopping costly and potentially fraudulent payroll practices at Metro-North. Metro-North and MTA officials agreed to study our recommendations.

This report, dated November 9, 2011, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Introduction

Background

The Metropolitan Transportation Authority (MTA) is a public benefit corporation providing transportation services in and around the New York City metropolitan area. The MTA is governed by a Board of Directors, whose 17 members are nominated by the Governor and confirmed by the State Senate. The MTA encompasses seven constituent agencies, including the Metro-North Railroad (Metro-North), which operates a commuter railroad between New York City and parts of upstate New York and Connecticut. The Hudson and Harlem Line is part of Metro-North. The Line's Signal Construction Unit has 30 employees.

Fatigue is estimated to be at least a contributing factor in one of every four serious human factor caused train accidents. Working excessive hours often leads to employee fatigue. The federal Hours of Service statute (Statute) was established in 1907 to improve railroad safety by limiting the number of hours certain railroad employees, such as engineers and conductors, may work within a designated time period, as well as requiring a mandatory rest period. The Statute states that covered employees can work up to 12 hours, plus an additional four within a 24-hour period in emergency situations, and then they must take 10 hours off. These employees cannot perform routine work (routine repairs, maintenance, or inspections) under the emergency provision.

There are several types of payments employees can receive, depending on labor agreements and their job title. These payments can include straight pay, which is paid when employees work their regular work hours; premium pay, which is calculated at time-and-a-half (we call this overtime pay); and Hours of Service payments. Some labor agreements say employees covered by the Statute can receive Hours of Service payments for the rest hours they do not work if those hours coincide with their regularly-scheduled work hours. To acknowledge this time, supervisors prepare attendance records using a code called Hours of Service. Assistant supervisors sign these attendance records and submit them to the payroll office to initiate payroll payments.

In July 2009, Metro-North employees started using a new timekeeping system (KRONOS). This system requires employees to use a time clock to punch in and out upon their arrival to, and their departure from work. If an employee does not punch in or out, an "exception" report must be completed by a supervisor in order for the employee to be paid for all claimed hours. The exception report authorizes the payroll office to manually override KRONOS and enter start and/or end times.

**Audit
Scope and
Methodology**

In a prior audit, MTA's Management and Control of Overtime Costs (2009-S-88), we identified employees who were paid significant overtime compensation. One of these employees worked in Metro-North's Signal Construction Unit for the Hudson and Harlem Line. Therefore, we used forensic audit techniques to examine payroll records and practices for this unit. We focused on the employees who received the highest amount of overtime payments to determine whether they were appropriately paid. Our audit scope period was January 1, 2009 through December 31, 2010.

To accomplish our objective, we interviewed relevant MTA and Metro-North officials and reviewed the Statute and respective labor agreements. We performed detailed tests of payroll, overtime, and payments for Hours of Service that were made to selected Metro-North railroad employees. We reviewed their payroll records and supporting documentation for the period January 1, 2009 through December 31, 2010.

We conducted our performance 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 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 of program performance.

Authority

We performed this audit 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.

**Reporting
Requirements**

We provided a draft copy of this report to MTA and Metro-North 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.

MTA and Metro-North officials agree with most of our report's conclusions and recommendations. However, they do not believe that any frauds have been perpetrated by their staff.

Within 90 days of the final release of this report, the Chairman of the Metropolitan Transportation Authority 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 therefor.

**Contributors
to the Report**

Major contributors to this report were Frank Patone, Michael Solomon, Randy Partridge, Lisa Duke, Cheryl Miles, Ira Lipper, and Sue Gold.

This page is left intentionally blank.

Audit Findings and Recommendations

We found that supervisors arranged Signal Construction Unit workers' schedules, including overtime, so that they worked the maximum time permitted under the Statute and had to stop working for the mandatory 10-hour period, which included their regularly-scheduled work hours. They are then paid for the required rest hours even though they did not work them. Moreover, the supervisors arranged their own schedules in a similar manner, approved their own attendance records, and compensated themselves for Hours of Service even though they do not appear to be covered by the Statute. In fact, prior to the implementation of Metro-North's KRONOS system, the supervisors charged the costs incurred for Hours of Service compensation to various Metro-North capital projects that were irrelevant to the workers' assigned tasks, thus further obscuring this arrangement.

These practices appeared to be longstanding and those staff obtaining the benefit may have understood it as an entitlement. Nevertheless, the payments to the signal workers during the Hours of Service intervals were the result of long-term management practices that were potentially avoidable and the actions taken by the supervisors to arrange this for themselves at the expense of Metro-North may be fraudulent. For calendar year 2010, we determined that these practices cost Metro-North \$991,208 in overtime and \$216,128 in Hours of Service pay that enriched the staff and supervisors. (See Exhibit A.) In addition, these payments will inflate future pension payments for these employees by an estimated \$5.5 million. (See Table, page 15.)

We conclude that a culture of entitlement, inaction by Metro-North and MTA officials, and ineffective payroll controls contributed to these costly payroll practices. Over the years, these practices have resulted in millions of dollars being paid to workers in the Signal Construction Unit. We plan on conferring with the MTA Inspector General as appropriate.

Costly and Questionable Payroll Practices

Supervisors regularly scheduled overtime for Signal Construction Unit workers. By doing so, they enabled the employees to earn time-and-a-half during those overtime hours and forced the employees into the statutory requirements of 10 hours of rest. While most of the Signal Construction Unit employees are covered by the Statute, not all are entitled to be paid for Hours of Service in the instances we examined. During calendar year 2010, we found 28 of the 30 employees in the Signal Construction Unit were paid a total of \$216,128 for Hours of Service and \$991,208 for

overtime. It appears that paying employees for Hours of Service is a long-standing practice condoned by Metro-North senior officials.

Signal Workers

The regularly-scheduled work hours for the Signal Construction Unit are 7:30 a.m. to 4:00 p.m., even though their work needs to be done during off-peak hours (i.e., evenings and weekends). As such, supervisors scheduled certain employees extended 12-hour overnight shifts, so they could complete work and would have to take the required 10 hours of rest during their regular work shift. The supervisors then signed and submitted attendance records to the payroll office indicating that their employees were entitled to Hours of Service payments. One employee explained that he is regularly scheduled to work 12-hour overnight shifts but often completes the work early. He finds additional work to do to meet the Statute's 12-hour requirement. This ensures he gets the mandatory 10-hour rest period and associated Hours of Service payment.

Supervisors

Supervisors also scheduled themselves for the 12-hour shifts and then claimed they were entitled to the Hours of Service even though they do not appear to be covered by the Statute. Supervisors do not perform any of the functions expressly set forth in the Statute, and they admittedly do not prepare the required federal reports to record compliance with mandated rest periods. We believe the supervisors were aware that the number of hours they can work was not limited by the Statute. One supervisor stated to us that he was not subject to the Statute. Yet, the two assistant supervisors signed the attendance records for themselves and their boss. These two assistant supervisors received a total of \$34,261 in payments during the audit period for time they did not work. We believe Metro-North has paid these assistant supervisors hundreds of thousands of dollars for time not worked during their employment. We have forwarded our findings to the State Comptroller's Investigations Unit for follow-up and appropriate referral.

We conclude that the supervisors are being regularly enriched from these potentially fraudulent activities. According to one supervisor, the Signal Construction Unit considered forming a night crew years ago, but the employees purportedly did not want to work at night (at straight pay) so it was not formed.

A careful analysis of overtime patterns showed that significant payments for overtime could have been avoided if Metro-North scheduled regular work hours for certain staff during the off-peak hours. Yet,

some of the employees who benefited the most from the overtime were the supervisors who manage the work schedules and the more senior employees who were padding their future pension income. In fact, one of the two assistant supervisors who signed attendance records for the Unit filed for retirement during our audit. He is receiving an annual pension of \$109,429.

The following table details the enriched pension benefits for six Signal Construction Unit employees. According to MTA officials, the average retiree will collect a pension for 25 to 30 years. Assuming a lifetime benefit of 25 years, the estimated pension enrichment for these employees exceeds \$5.5 million.

Employee/Age	Base Salary	Annual Pension Based on Base Salary	Pension Enrichments*	Total Annual Pension*	Total Lifetime Pension Enrichments*
Assistant Supervisor/58**	\$75,920	\$47,713	\$61,716	\$109,429	\$1,542,900
Assistant Supervisor/57***	75,920	41,616	32,888	74,504	822,200
Signalman/56***	64,106	38,066	23,697	61,763	592,425
Signalman/59***	64,106	35,280	28,930	64,210	723,250
Signalman/49	67,954	31,041	36,115	67,156	902,875
Assistant Foreman/60**	67,954	24,120	38,752	62,872	968,800

*Includes Hours of Service and overtime.

** Employee retired.

*** Employee eligible to retire in 2011.

Attendance Records

We reviewed employee attendance records that were submitted both before and after the implementation of KRONOS. Our review found that, prior to the implementation of KRONOS in July 2009, the supervisors had been completing attendance records indicating that they were often working 20-hour days comprising their regularly-scheduled work hours and overtime. This amount of hours worked consecutively and consistently is highly questionable on its own and even more so since we found no independent evidence that these extensive hours were actually worked. When we brought our observations to the attention of Metro-North officials, they indicated that supervisors were actually working “Hours of Service” for this compensation. However, as evidenced by staff and supervisors’ attendance records, the Hours of Service code existed

pre-KRONOS but was not used in these numerous instances. Instead, various capital project codes were charged by supervisors during their regularly-scheduled work hours. Upon the implementation of KRONOS, which requires employees to clock in upon arrival to work and to clock out upon their departure, the supervisors started charging Hours of Service for their regularly-scheduled work hours between the overtime hours they worked. We conclude, therefore, that the implausible 20-hour work days scheduled before KRONOS, and the inappropriate charges to Hours of Service after KRONOS, were done purposely to pad salaries.

We also performed a detailed review of information in KRONOS and exception reports that were submitted for the period April 28, 2010, through July 27, 2010. We found 31 instances of missed time punches for three employees, of which 12 were not supported by an exception report. However, these employees were paid a total of \$5,845 for this time even though there was no documentation to show the hours were worked.

The most egregious abuser of the KRONOS system that we identified was a supervisor who missed 21 time punches during our review period. We expanded our review of this supervisor's time punches and found that from July 2009 through July 2010, the supervisor failed to punch in and document his time in KRONOS for 205 days, yet he was paid \$82,867 for this time. For 12 of these days, he signed attendance records indicating he worked 143 double-time hours and was paid \$10,489 for this time. When we talked to the supervisor's boss, he said employees who are trying to manipulate the system have a pattern of failing to punch in and punch out. He also said he did not know the supervisor in question had a pattern of failing to punch in and punch out. Despite acknowledging that employees may try to manipulate the system, this manager told us he does not review timekeeping reports for his employees.

We interviewed the payroll clerk and supervisor responsible for processing the Hudson and Harlem Line's payroll. Both said their primary objective is to ensure employees are paid on time. The clerk said employees pressure her to pay them for time they purportedly worked. The clerk said that she overrides KRONOS with information on the attendance records instead of questioning why the documents do not match. Further, the payroll supervisor stated there is no standardized exception report and that each unit is allowed to develop and use whatever document and format it prefers.

We also found instances where Hours of Service time was allocated to projects already completed or where employees had no legitimate reason to work on the project. In one instance, supervisors and employees were allocating Hours of Service costs to a capital project that was being

completed by a third-party contractor. We believe that disbursing the costs among multiple projects was part of an overall strategy to minimize the chances that these costly payroll practices would be detected.

Inappropriate Payments for Travel Time

Metro-North Signal Construction Unit employees often need to travel to various locations to perform their work, instead of being at their official location where they clock in and out. In these instances, employees are allotted paid travel time for the time it takes them to return to their official location at the end of their work tour. This “travel time” is noted on the employees’ attendance records. Metro-North records indicate that, for calendar year 2010, there were 20 Signal Construction Unit employees who were paid \$25,989 for travel time. However, when we reviewed a sample of records for three of these employees, we found they were already at their respective official locations at day’s end and did not need to travel at that time. Therefore, they were not entitled to be compensated for travel time. These three employees received \$2,557 of inappropriate travel pay.

Long-Standing Practices

We found there was a strong sense of entitlement by the employees who were paid for Hours of Service even though they did not work during those hours. Further, when we interviewed Metro-North officials, it became clear that managers and supervisors were well aware of this practice. In fact, this practice, for the rank and file signal construction crew, was adopted from Metro-North’s predecessor railroad (Con Rail) and incorporated into their employee contract. Although these costly practices are avoidable by assigning certain staff to off-peak hours, there was a culture of acceptance that let this practice continue. One employee stated directly, “I’m entitled to it” and added that “it’s my turn now.” Another employee stated, “I know I have a good gig going on. If I had to name the top five jobs in the country, this would have to be, hands down, number one.” These statements exemplify the sense of entitlement and culture that is likely pervasive throughout the MTA. They are also consistent with our findings in our prior audit of the MTA on overtime (2009-S-88). However, it also should be noted that establishing a new shift to avoid overtime on a permanent basis might entail negotiation with the employees’ union.

We believe these payments to the Signal Construction Unit crew, and the potential payroll fraud perpetuated by supervisors, occurred for several reasons. It appears that top Metro-North officials embraced these long-standing practices; supervisors were allowed to continue with these

practices; and employees felt they were entitled to these payments. All of this created an environment that has cost Metro-North millions of dollars in compensation and pension benefits.

Further, there was a severe absence of internal controls in the payroll office. KRONOS was implemented as a way to track time and attendance. However, payroll staff ignored the inconsistent payroll information when asked to do so by supervisors and did not follow up when they received incomplete exception reports. When there was inconsistent attendance information in KRONOS and no corresponding exception reports, payroll staff still processed the payroll. Payroll staff should have reconciled attendance records, exception reports, and KRONOS; and employees should not have been paid if they did not work or they were not entitled to the Hours of Service payments. However, none of these checks and balances was ever used. Since the payroll office is responsible for several other Metro-North operating units, we believe there is a risk this is also happening in other units.

Had MTA management established adequate control systems and sufficiently monitored the Metro-North's Hudson and Harlem Line, they may have realized the compensation figures were out of line with similar units and conducted an investigation to determine why.

- Recommendations**
1. Study the cost benefit and feasibility of rearranging signal workers' schedules (e.g., a night shift) so that unnecessary overtime pay is stopped.
 2. Discontinue Hours of Service payments and related premium pay for employees who are not entitled to it.
 3. Investigate the inappropriate payments noted in our report and take appropriate corrective action, including disciplinary action, recovery of payments, and adjusting pension benefits.
 4. Clarify and communicate, as appropriate, which employees are entitled to compensation for Hours of Service and which are not.
 5. Adhere to payroll controls that are designed to provide checks and balances such as reconciling all exceptions between KRONOS and manual attendance records.
 6. Immediately discontinue the practice of supervisors signing attendance records for themselves and determine whether other corrective action or disciplinary action is warranted.

Exhibit A**Signal Construction Workers: Hudson and Harlem Line****Earnings****January 1, 2010 through December 31, 2010**

Employee	Employee Job Title	For Regular Hours Worked	For Hours Of Service	For Overtime	*Other	Earnings Total
1	Signalman	\$24,922	\$28,685	\$67,315	\$24,531	\$145,453
2	Assistant Foreman	23,958	28,404	76,889	69,476	198,727
3	Signalman	21,629	27,908	61,450	16,346	127,333
4	Signalman	28,437	25,033	66,731	22,825	143,026
5	Assistant Supervisor	43,265	21,627	78,005	14,994	157,891
6	Assistant Supervisor	51,092	12,634	59,935	17,645	141,306
7	Signalman	44,528	11,640	54,844	18,936	129,948
8	Maintainer Test	49,061	6,714	22,977	12,279	91,031
9	Signalman	47,071	5,794	31,625	14,990	99,480
10	Signalman	47,414	5,539	26,296	13,345	92,594
11	Signalman	44,635	5,440	12,616	14,612	77,303
12	Signalman	47,604	5,024	39,384	13,668	105,680
13	Assistant Foreman	52,508	4,734	24,520	12,066	93,828
14	Foreman	51,733	3,827	17,615	19,534	92,709
15	Signalman	46,426	3,467	44,890	23,453	118,236
16	Signalman	46,311	3,365	8,660	13,850	72,186
17	Signalman	48,251	2,474	19,405	17,720	87,850
18	Signalman	40,096	2,234	20,249	16,610	79,189
19	Signalman	45,057	1,849	18,081	18,892	83,879
20	Assistant Foreman	56,533	1,748	20,885	10,983	90,149
21	Assistant Foreman	52,966	1,748	25,167	17,058	96,939
22	Signalman	51,494	1,701	17,529	14,301	85,025
23	Signalman	53,869	1,418	60,454	13,638	129,379
24	Signalman	49,581	1,125	24,960	14,258	89,924
25	Signalman	33,440	1,094	24,410	10,421	69,365
26	Supervisor	59,847	785	24,848	20,559	106,039
27	Signalman	51,941	64	1,798	13,536	67,339
28	Foreman	64,030	53	32,519	13,611	110,213
29	Signalman	52,777		5,494	14,602	72,873
30	Signalman	38,706		1,657	12,948	53,311
		\$1,369,182	\$216,128	\$991,208	\$531,687	\$3,108,205

* Other represents Sick Time Hours, Vacation Time Hours, Travel Time Hours, etc.

This page is left intentionally blank.

Agency Comments

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

Jay H. Walder
Chairman and Chief Executive Officer



Metropolitan Transportation Authority

State of New York

August 10, 2011

Mr. Frank Patone
Audit Director
The Office of the State Comptroller
123 William Street – 21st Floor
New York, New York 10038

Re: Report #2010-S-60 - MTA Metro-North Railroad Payroll and Overtime Audit

Dear Mr. Patone:

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

I have attached for your information the comments of Howard Permut, President, MTA Metro-North Railroad, which address this report.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Fucilli".

Michael J. Fucilli
MTA Auditor General

Attachment

The agencies of the MTA
MTA New York City Transit
MTA Long Island Rail Road

MTA Long Island Bus
MTA Metro-North Railroad

MTA Bridges and Tunnels
MTA Capital Construction

MTA Bus Company

347 Madison Avenue
New York, NY 10017-3739
212-532-4900

Howard Permut
President



August 9, 2011

Mr. Jay H. Walder
Chairman and Chief Executive Officer
Metropolitan Transportation Authority
347 Madison Avenue, 7th Floor
New York, NY 10017

RE: MTA Metro-North Railroad Payroll and Overtime Audit (2010-S-60)

Dear Chairman Walder:

In our effort to make every dollar count, Metro-North has been focused on reducing unnecessary overtime, and as a result, we have already cut approximately 8% of our overtime budget in the last 2 years. We continue to work to reduce uneconomical overtime in a number of different areas, with a recent focus on infrastructure maintenance, vehicle maintenance and inspection of capital programs. We appreciate the assistance the Office of the State Comptroller's has given in the pursuit of opportunities to reduce our costs and do our work as efficiently as possible. We recognize the significant time and effort OSC has taken to address these issues, and we are responding with actions that will help us maximize the benefits of state tax dollars.

We agree that the scheduling of signal construction work deserves a fresh look as do our timekeeping controls and we have begun to do this with the assistance of MTA Audit Services. We also welcome the review by the Office of the State Comptroller of possible fraudulent payments. However, there are three key findings in OSC's Draft Report which warrant further clarification:

1. Role of Supervisors in the scheduling of capital work. OSC asserts that Supervisors and Assistant Supervisors in the Communications & Signals (C&S) Department have the authority to schedule capital work, and as a result, are intentionally scheduling work in ways that maximize their own pay. This is incorrect. *Supervisors and Assistant Supervisors do not have this authority and are therefore unable to do this.* The one Supervisor and two Assistant Supervisors cited in the report do not control the amount or timing of the overtime work that is scheduled.

*
Comment
1

Decisions about what capital work will be done and when it will be done are made by MNR senior management. The actual scheduling of particular projects is the result of a series of management decisions related to project priority, location, seasonal timing, staff resources, the ability to gain track access with the least impact on service and on-time performance as well as the ability to maximize track outages for productive work time. While an individual supervisor has input into how many employees are needed to perform a particular job or task, a supervisor does not have the ability to schedule capital projects, decide how many employees work on a particular shift or establish new shifts. It is important to point out that the collective bargaining agreements govern the number and duration of shifts.

*
Comment
1

MTA Metro-North Railroad is an agency of the Metropolitan Transportation Authority, State of New York
Jay H. Walder, Chairman and CEO

* See State Comptroller's Comment on page 27.

2. Contractual limitations.

Two labor organizations represent the employees referenced in OSC audit. The Association of Commuter Rail Employees (ACRE) represents MNR signalmen and the American Railway Supervisors Association (ARSA) represents the supervisors and assistant supervisors in the Maintenance of Way Department. The current labor agreements constrain MNR's ability to add additional shifts or change the time and duration these shifts can work. Modifying these types of restrictions has been identified by MNR management as a potential element to be negotiated in the current round of bargaining with all our unions.

*
Comments
1 & 2

3. Interpretation and application of the Federal Hours of Service (HOS) Law.

MNR and its predecessor railroads have always included ARSA Supervisors and Assistant Supervisors with respect to the application of Federal HOS regulation. The HOS regulations and restrictions focus on the tasks performed and not the title of the individual performing the tasks. Any individual performing HOS work is required to follow the HOS rest requirements. To ensure compliance with the regulation when these supervisors are scheduled to perform work covered by HOS provisions, they will need to be subject to the same requirements for rest – and therefore eligible for the same types of payments. OSC may disagree with this application of the HOS regulations, but it should be clear that MNR's practice is based on the priority we placed on complying with federal regulation and running a safe railroad and not with the intent of enriching supervisory pay.

*
Comment
3

We note that the report still indicates that "the supervisors have been knowingly defrauding Metro-North by claiming payments for Hours of Service." However, this is contradicted by the requirements of HOS law and a later comment in the report which accurately indicates that Metro-North's senior officials adopted these payroll practices previously employed by Conrail, as documentation has shown. Therefore, this statement should be revised.

*
Comment
4

With respect to the specific recommendations contained in the report, and as required by Section 170 of the Executive Law, MNR has detailed below the actions that have been taken or will soon be taken.

Recommendation 1:

Rearrange signal workers' schedules (e.g. a night shift) so that unnecessary overtime pay is stopped.

MNR Response to Recommendation 1:

We agree that the scheduling of work is a key driver of overtime pay, and across the railroad we have always strived to strike a balance between using existing employees on overtime versus hiring additional new employees, each of whom increase our fringe benefit costs and long-term pension obligations. It is important to point out that much of the signal construction work needs to be performed after hours in order to maintain service reliability during the peak periods of operation.

* See State Comptroller's Comments on pages 27-28.

In order to address this issue comprehensively, we have established a task force to explore various scheduling and staffing alternatives which can reduce the use of overtime. The task force is developing alternatives, including the establishment of a third shift. It is also comparing the productivity levels and total cost implications against current practices and between alternatives. Based on the results of this study, MNR will determine what contractual changes provide the greatest benefit and will incorporate them into the current round of bargaining. Note that if the task force identifies any small, incremental improvements that can be made under the contract as it currently exists, these improvements will be implemented as quickly as possible.

Recommendation 2:

Discontinue Hours of Service payments and related premium pay for employees who are not entitled to it.

MNR Response to Recommendation 2:

The C&S task force is also reviewing the work that is being paid under HOS regulations. In addition to looking at how HOS can be reduced for signal employees, this review will explore the work alternatives in which MNR Management would consider not applying the HOS regulations to supervisors while maintaining compliance with the regulations. There may be certain situations in which a supervisor might be able to stay on-property through both their regular and overnight shifts as long as the work they will do is not covered under the regulation. Where HOS payments remain unavoidable, MNR will continue to pay both supervisors and their employees for these hours. As discussed with OSC, MNR does not believe that simply ending all HOS payments to supervisors is the correct course of action. It would restrict the ability of the supervisor to perform tasks covered by the HOS regulation and necessary to ensure correct testing, modification and installation of the wayside signal systems.. In addition, as a past practice, a unilateral decision such as that would likely be challenged by the union at arbitration; based on past experience the union's grievance would likely be upheld.

Recommendation 3:

Investigate the inappropriate payments noted in our report and take appropriate corrective action, including disciplinary action, recovery of payments and adjusting pension benefits.

MNR Response to Recommendation 3:

We agree that any and all inappropriate practices and payments should be fully investigated, and OSC's and/or MTA Office of Inspector General's investigators will have our complete cooperation. If payments are deemed inappropriate by the investigation, we will take appropriate corrective actions wherever possible and consistent with the appropriate collective bargaining agreements.

Recommendation 4:

Clarify and communicate, as appropriate, which employees are entitled to compensation for Hours of Service and which are not.

MNR Response to Recommendation 4:

Once the task force's review is completed, we will issue written instructions communicating which employees and under what circumstances HOS payments are allowed, consistent with the collective bargaining agreements and regulations.

Recommendation 5:

Adhere to payroll controls that are designed to provide checks and balances such as, but not limited to, reconciling all exceptions between KRONOS and manual attendance records.

MNR Response to Recommendation 5:

All exceptions between KRONOS and manual attendance records in the C&S Department are now being reconciled prior to payroll payments being made. Additionally, MNR has requested and is receiving assistance from MTA Audit Services in a review of timekeeping and payroll controls across all MNR Departments. Once completed, MTA Audit Services will provide MNR with recommended improvements and implementation strategies that coincide with the full implementation of the KRONOS timekeeping system in the 4th quarter of this year.

Recommendation 6:

Discontinue the practice of supervisors signing attendance records for themselves.

MNR Response to Recommendation 6:

We agree that the approval of one's own time for payment is unacceptable. Upon notification to MNR senior management that some supervisors were signing their own attendance records, this practice was immediately corrected through re-instruction of supervisors and timekeepers. Additional policy language and/or controls are being considered as part of the MTA Audit Services led timekeeping and payroll review.

If you have any questions or need additional information, please contact me. Thank you.

Sincerely,



Howard Permut

cc: M. Fucilli
R. Lieblong
R. Burney
K. Porcelain
R. Staley
D. Evans
N. Gilbertson

This page is left intentionally blank.

State Comptroller's Comments

1. Our report does not assert that supervisors have the authority to schedule capital work. Capital work must be authorized by management. However, management has the authority to establish work shifts as necessary as well as how many workers are needed for these shifts. Employees select their work shifts within the parameters of the collective bargaining agreements and we recognize that management cannot arbitrarily move workers to different shifts. Nevertheless, management could hire new staff for a second shift or could negotiate for staffing of a second shift. In addition, attrition from the existing shifts could create an opportunity to fund second-shift staffing. As our report points out, the cost associated with the existing use of overtime and Hours of Service pay is exorbitant. As noted in our prior audit report (2009-S-88, issued August 5, 2010), New York City Transit was already addressing a similar issue by assigning workers to their three existing shifts.

The fact is that Metro-North has three work shifts on its schedule, but has not made the second shift available for permanent assignment. Consequently, all signal workers are assigned to a daytime shift or, to a lesser extent, an overnight (graveyard) shift. Accordingly, the workers who are on the daytime shift obtain overtime when they must work the second shift, which is also the shift where most productive work is performed because this time frame is off peak. Also, workers assigned to the graveyard shift, similarly obtain overtime when they are asked to come in early to work. A more economical method would be to have staff permanently assigned to a second shift, which would minimize overtime as well as Hours of Service pay and would employ the workers during the most productive, off-peak hours with a corresponding reduction to daytime staffing when very little work can be performed on the tracks.

Based on our direct observations and interviews with the supervisors, these individuals do, following union rules and based on the needs and requests of other Metro-North departments such as Maintenance of Way (track workers), assign overtime on a daily basis. In addition, the supervisors do assign themselves to work overtime. Moreover, they also inappropriately prepare their time sheets to obtain hours of service pay that they are not entitled to. The fact that Metro-North management is now acknowledging and condoning the way supervisors are conducting themselves does not change the inappropriateness of this behavior. We continue to assert that what is happening is potentially fraudulent based on all the facts and circumstances encountered during the audit. It was only at the very final stages of the audit that it was asserted by Metro-North management that they condoned this practice.

2. As previously noted, Metro-North already has three existing shifts. We understand that making new shifts or changing existing shifts would present a constraint.
3. It should be noted that the supervisors are not performing the specific tasks outlined in the Hours of Service Statute regulations and they do not maintain the required records for those who are subject to the regulations. As our report points out, although Hours

of Service pay is included in the collective bargaining agreement for the signal workers, no such provisions exist in the agreements for the supervisors.

4. We revised our report to indicate the actions were potentially fraudulent. It should be noted that while Metro-North officials now indicate that they were aware of and are supporting of the actions by the supervisors, that position was established only at the exit conference when we spoke with the most senior officials. Finally, our report points out that the supervisors were not complying with established payroll controls when they asked payroll clerks to process overtime where time and attendance records were not supportive of overtime being worked.