

SUSPENSION



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

September 30, 2014

Honorable Members
Erie County Legislature
92 Franklin Street, Fourth Floor
Buffalo, New York 14202

Re: Erie County Comptroller's Office –Internal Audit Outsourcing

Dear Honorable Members:

I am writing to share with you the opinion of the Erie County Department of Labor Relations ("Labor Relations") regarding the Erie County Comptroller's solicitation for Internal Audit Services outlined in the Comptroller's request for proposals ("RFP") dated August 1, 2014, as well as a related Comptroller request pending before your Honorable Body (Comm. 18E-5) that has significant labor relations implications to the County.

I am providing this legal opinion proactively because the Comptroller's Office has never contacted Labor Relations for an opinion on the matter, despite issuing a Request for Proposals ("RFP") on August 1, 2014 and deciding to award a contract and seek legislative approval of that action (Comm. 18E-5) at the Legislature's Finance and Management Committee on September 25, 2014. This office subsequently became aware that certain questions and concerns were raised by some members of your Honorable Body at that committee meeting, and after a representative of the Comptroller's Office made certain representations and comments.

The Comptroller's RFP and proposed authorization to enter into contract with a private sector contractor to conduct internal audit services directly impacts the 2008-2016 collective bargaining agreement recently executed by Erie County and the Civil Service Employees Association, Local 1000 AFSCME – AFL-CIO, Erie Unit of Local 815. As you know, under the Comptroller's proposal, he would delete certain civil service auditor positions in his Division of Audit and Control and outsource (in his words, "co-source") the functions and responsibilities to a private sector accounting firm.

Under the CSEA collective bargaining agreement, the Article I Recognition Clause, as well as the "Appendix A - White Collar Title Listings" secure the tasks and duties performed by auditors in the Comptroller's Office as work exclusively performed by bargaining unit employees represented by CSEA, Local 815. Outsourcing, as noted by Legislator Barbara

SUSPENSION

Miller-Williams during the Finance and Management Committee meeting, as well as “co-sourcing,” as the Comptroller’s Office calls it, during the term of a valid collective bargaining agreement without the consent of the Union constitutes a violation of § 209-a(1)(d) of the Public Employees’ Fair Employment Act, Article 14.

Should the Comptroller’s Office take steps to replace any audit positions (either vacant or filled) for internal auditing duties with an outside service provider, it is likely, based on the correspondence from CSEA Local 815 President Denise Szymura, dated September 18, 2014, that CSEA will file an improper practice charge with the New York State Public Employment Relations Board (“PERB”) alleging an unlawful unilateral change to the terms of the parties’ contract without bargaining with the Union. Though the opportunity to bargain over a change to these positions would have been ripe during the most recent round of negotiations in summer 2014, the Comptroller’s Office instead waited until negotiations were concluded and the contract was ratified to seek, for the first time, a change to Appendix A of the collective bargaining agreement.

Moreover, I am unaware of any facts that would otherwise privilege the unilateral subcontracting of the bargaining unit work on the basis of business necessity. The Comptroller’s purported rationale, i.e., “to enhance the subject matter expertise and experience of our audit division” can be accomplished simply by hiring and retaining competent and experienced audit professionals to fill the positions and providing training or tools to the auditors to conduct their work. However, to our knowledge, no such efforts were made during 2014 to fill the current two vacant audit positions (which have been vacant for months) such as placing public advertisements, utilizing social media tools, posting the jobs, seeking variable minimums from the Legislature for candidates, or conducting specialized training, etc. The Comptroller’s claim that he needs to, essentially, privatize this work by seeking “expertise and experience” not present in the audit division is suspect. Absent any legitimate defense, I fully expect PERB would find Erie County in violation of §209-a(1)(d) of the Taylor Act.

If PERB ruled against the County, the typical remedy in such cases is to restore the affected employees to their bargaining unit positions with a make-whole remedy (back pay with interest, restored benefits and reimbursement for any out of pocket benefit expenses, seniority, and retirement credits). If, in fact, the Comptroller’s Office retains and compensates an outside firm to perform the internal audit work, the County effectively will have paid twice to accomplish the internal audit work and will also incur expenses related to appearing and defending the charge before PERB and the lost-time opportunity costs by County employees spent on this matter. The costs to the County could be several hundreds of thousands of dollars.

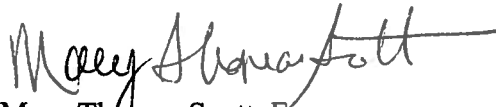
Replacing the bargaining unit positions with an outsourced provider is ill-advised and not in the County’s best interest. Accordingly, the Department of Labor Relations opposes the Comptroller’s actions and respectfully urges your Honorable Body to consider the consequences to the County. In order to resolve this matter, I recommend that you consider convening a meeting involving representatives from the Comptroller’s Office, Labor Relations and CSEA to discuss the Comptroller’s request in greater detail and with all relevant parties present and allowed to speak.

SUSPENSION

Labor Relations does not object to the Comptroller's request in Comm. 18E-5 to hire an outside accounting firm to engage in a short project to conduct a countywide fraud risk assessment. Because that would be a short-term project, similar to the annual retention of an external independent auditor for the County's financial statements, and does not involve the deletion of positions represented under a collective bargaining agreement, there is no problem or issue with that portion of the Comptroller's request.

If you have any questions, or would like me to appear before your Honorable Body to discuss this matter, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Mary Thomas Scott".

Mary Thomas Scott, Esq.

Interim Commissioner of Labor Relations

cc: Comptroller Stefan I. Mychajliw
County Executive Mark C. Poloncarz, Esq.
Commissioner of Personnel David Palmer