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TO: The Erie County Legislature

**CC: John Greenan, Commissioner of Personnel
Hon. Christopher Collins, County Executive
Gregory Gach, Director of Budget and Management
Erie County Fiscal Stability Authority
Joan Bender, CSEA Local 815**

FROM: The Erie County Comptroller, Division of Audit and Control

DATE: June 20, 2011

RE: A review of calculations supporting payments to former Regular Part-Time Employees as a result of the CSEA – Collins Settlement.

Erie County (the “County”) has four general classes of employees: full-time, regular part-time (“RPT”), part-time and seasonal. RPT employees work between 20 and 39 hours per week and receive half the paid leave of a unionized full-time employee.

In 2008, the Collins administration instituted a policy of hiring RPT employees (working the maximum of 39 hours per week) for what had previously been full-time positions. Essentially, Collins was hiring part-time employees to do full-time work in order to reduce their paid leave in half.

The Civil Service Employees Association (“CSEA”) Local 815, the County’s white-collar union, objected to this practice and filed a grievance with the State Public Employment Relations Board (“PERB”). After CSEA won their grievance before PERB, Collins filed suit in State Supreme Court and then State Appellate Court, losing both cases. A panel of five judges unanimously ordered to make the employees “whole” as though they were 40 hour-a-week full-time employees. An agreement (the “Agreement”) was then reached on March 8, 2011, between CSEA and the Collins administration to compensate RPT employees for the difference in paid leave time that would have been accrued, retroactive to their initial start date.

Pursuant to the Agreement, the Erie County Department of Personnel (“Personnel”) performed a series of calculations in order to appropriately compensate affected employees. Payments were issued to employees in April 2011. A routine spot-check of these calculations by the Division of

Audit and Control revealed some anomalies. The Deputy Comptroller – Audit discussed what was discovered with the Comptroller and an examination of all payments was promptly initiated.

ISSUE

Were the payments made to RPT employees in accordance with the Agreement between CSEA and the Collins administration? We examined (this list is not exhaustive):

- ✓ Were the 15 minute lunch hour calculations correct for each employee?
- ✓ Were the employees' vacation, sick, personal leave, holiday and summer compensation payments correct?
- ✓ Were employees paid at the correct rate?
- ✓ Were employees' time balances (vacation, sick and other time) correct?

TESTING

We reviewed payments made to 311 RPT employees who were compensated for lost paid leave as per the Agreement.¹ When reviewing these payouts and adjustments, our calculations were based on each employees RPT start date and the end date of March 25, 2011, the date when RPT employees were made full-time. An ending date of February 18, 2011, was used for the calculation of the payment for an additional 15 minutes of lunch time.² This is also the date used by Personnel for their lunch calculations.

Vacation and Sick Time:

RPT employees accrued half of the vacation and sick time of a full-time employee. As per the Agreement, additional hours were added to each RPT employees' vacation and sick banks to equal the number of hours they would have accrued with full-time employee status. However, if no longer employed by the County, former employees were sent payments for the cash-out of vacation time accrued when they ended service. The CSEA contract specifies that employees that leave the County's service are not compensated for unused sick time.

We discovered 14 instances where Personnel underpaid vacation cash-out, 6 instances where vacation banks were not adjusted and 5 instances where sick bank hours were not adjusted. The majority of the vacation underpayment differences we found (13 of 14) occurred because employees were laid-off and have not come back. There is no guarantee that these people will be called back and should therefore be paid for this time. The other reasons for our differences are that four payments were missed by Personnel and three employees are on leave without pay and will eventually be credited with the hours when they come back to work.

¹ When the words "We" and "Our" appear in this document, they refer to the Division of Audit and Control.

² If the employee was taken off RPT status before February 18, 2011, then that date was used in our calculation. The February 18, 2011 date was the date when Personnel told departments to allow their RPT employees to begin taking hour lunch breaks, therefore that was the latest date we used.

Holiday Pay:

Full-time employees are paid for an entire day (8 hours) and RPT employees a half day (4 hours) for the 12 annual holidays throughout the year, totaling 96 hours and 48 hours per year, respectively. As per the Agreement, RPT employees were to be compensated for the additional hours they would have received (up to 48 additional hours annually) at their 2011 rate of pay.

All but nine employees' holiday pay calculations were correct. Five of those employees were given incorrect holiday pay while they were an RPT employee, the other four were either not paid or lost holiday pay was calculated wrong.

Summer Hours/Compensation Time:

During the summer, from July 1st through the week following Labor Day, full-time employees are allowed to leave work 30 minutes early or take three days (24 hours) of summer compensation time, where RPT employees are granted 15 minutes early leave or one and a half days (12 hours) summer compensation time. The Agreement called for RPT employees to be paid for the other 12 hours they would have received annually at their 2011 rate of pay.

We encountered 32 instances where Personnel's summer hours calculations were inaccurate. Our calculations differed because Personnel either did not use the correct start date or did not take into account the correct amount of time an employee was on Leave Without Pay status.

Personal Leave Time:

After one year of service, full-time employees earn 32 hours and RPT employees earn 16 hours of personal leave ("PL") annually. As part of the Agreement, RPT employees were to be compensated for the additional 16 hours annually they would have received after their first year of service as a full-time employee at their 2011 rate of pay.

We encountered 15 instances where Personnel's calculations for PL cash-outs were incorrect. Our calculations were different mainly because the SAP system actually calculates some PL accruals incorrectly. These incorrect accrual amounts would then show up in the reports Personnel used to calculate the PL payouts.

Once we learned of the problem with SAP giving incorrect PL accruals, we separately tested RPT employees PL accruals going back from 2006 through 2010. The problem stems from when employees either don't use all of their time during the previous year or when they use personal leave time during their anniversary pay period. Another issue we discovered was that Library RPTs were receiving 28 hours instead of 16. For the five year period, there were 15 employees that received more than the 16 hour personal leave accrual, totaling 141 excess hours with the Library accounting for 123 of these hours. We performed a spot check of full time employees that either used personal leave hours during their anniversary pay period or didn't use all their hours during the year and found no errors.

Lunch Time:

Lastly, RPT employees received a half-hour paid lunch when they should have received an hour. The Agreement called for employees to be paid for an additional 15 minutes of lunch rather than the full 30 minute difference.

Our calculations for lunch time compensation differed from those made by Personnel, disagreeing with the calculations made for 308 of the 311 RPT employees. This was due to the fact that Personnel allowed this payment to include holidays even though the Agreement specifically stated that holidays were not to be included.

FINDINGS

After reviewing the payments made to the 311 RPT employees and making our own calculations we discovered the County overpaid employees by net of more than \$11,000. Our calculations, for the most part, agreed with what was paid out by Personnel. However, our biggest concern, and consequently the most costly to the County, was with the payments made to RPT employees for the additional 15 minutes of lunch time, which amounted to more than \$25,000 in overpayments.

Our testing of the cash-outs revealed the following **general** findings:

1. Payments were calculated at current employee wage rates, as per the Agreement, even though much of the time earned by the RPT employees was before 2011 at lower wage rates. This resulted in cash-out dollars to employees calculated at a higher rate than would have been earned at the time. In other words, the County is paying more today than it would have if the employees had been classified as full-time from the start;
2. RPT Employees were not compensated for their PL balance prior to their anniversary, resulting in an underpayment of their cash-out. This was due to the way the County's computer system replenishes leave banks at their anniversary date;
3. Most of the RPT employees that are no longer employed by the County were changed to Special RPT titles on March 25, 2011, and did not get paid for the additional vacation accrual that they were due; and,
4. Employees that were on Leave Without Pay status on the RPT to Special RPT conversion date did not receive the additional vacation and sick accruals that they were due. This needs to be tracked until they are either separated or come back as Special RPT or full-time.

Our testing of the cash-outs revealed the following **specific** findings:

1. Personal Leave was underpaid by a net total of more than \$1,600;
2. Holiday Pay was underpaid by a net total of more than \$150;
3. Summer Compensation was underpaid by a net total of more than \$1,400;
4. Vacation Pay was underpaid by a total of more than \$10,000;
5. There were 6 instances where Vacation Leave banks were not credited for the additional vacation accruals totaling 172 hours;
6. There were 5 instances where Sick Leave banks were not credited for the additional sick accruals totaling 228 hours; and,
7. Payments to employees for the additional 15 minutes of paid lunch were overpaid by a net total of more than \$25,000.

Summary of Over and Under Payments

	Overpayment	Underpayment	Net Overpayment
Personal Leave		\$1,612.02	
Holidays		\$162.39	
Summer Compensatory Time		\$1,418.73	
Vacation		\$10,883.84	
Sick		\$0	
Lunch Time Awards	\$25,437.31		
			\$11,360.33

Overpaid employees will have these monies recovered as per Erie County Policy, while underpaid employees will be compensated during future pay periods.