

**Nassau County
Office of the Comptroller**



**Limited Review
Of Compensation and Fringe Benefits for
Sanitary District No. 7 – Town of Hempstead**

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Comptroller

October 29, 2009

NASSAU COUNTY
OFFICE OF THE COMPTROLLER

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Executive Summary

Background

Solid waste collection and disposal for residents in the unincorporated areas of towns in Nassau County (the “County”) is organized by sanitary districts. Owners of homes and businesses within the sanitary district fund the district through property taxes, and the district provides services to the residents and some of the businesses located in the district.

Sanitary districts are run either by the Town Board or by elected Commissioners. Sanitary districts that are headed by the Town of Hempstead are run as a single administrative department of the Town. Sanitary districts that are headed by elected Commissioners are run independently by the Board of Commissioners.

Town of Hempstead Sanitary District No. 7 (the “District”) serves the community of Oceanside and was established by the Town of Hempstead on July 14, 1931.¹ This audit report reviews the financial operations, as they relate to compensation and fringe benefits of the District, which provides refuse collection services to approximately 10,025 residential and 925 commercial parcels.² The District provides curbside garbage collection six days a week (three days a week to each side of the community) and additional recycling, newspaper, and trash and metal pick-up services.

The District is governed by a Board of Commissioners (the “Board”), consisting of five members who are elected for a five-year term. The Commissioners are paid \$7,500 per year. The District employed 62 people³, including the Commissioners, during the period 2006 through 2008. Total District expenses for employee salaries and benefits were \$5,950,493, \$6,075,844, and \$6,170,143 for 2006, 2007, and 2008, respectively. These costs represent 91%, 89%, and 88% of the District’s total expenditures of \$6,505,077, \$6,820,389, and \$6,984,186 in 2006, 2007, and 2008, respectively.⁴ The District’s employees, including its highest-level manager, the General Sanitation Supervisor, are members of one of two unions. Apart from the Commissioners, the District has no manager independent from one of its unions.

The District derives its operating revenues from real property taxes collected by the Town of Hempstead and forwarded to the District semiannually. Additional District revenues are derived from interest earned on investments, payments in lieu of taxes and insurance recoveries and refunds. Total District revenues reported were \$6,345,887, \$7,047,204, and \$7,538,905 for 2006, 2007, and 2008, respectively.⁵

Cost Analysis of Operations

Residential and commercial property owners located within the District paid an average sanitation tax per parcel of \$676 in 2008.⁶ In contrast, the average sanitation tax paid in 2008 by

¹ Chapter 516 of the Laws of 1928.

² Source: Nassau County Department of Assessment, 2009 parcel counts; 9,986 Class 1 and 39 Class 2 (total 10,025 residential parcels); 889 Class 4 and 36 Class 3 (total 925 commercial parcels).

³ Per listings provided by the District that summarized employees by union (57 employees plus the five Commissioners).

⁴ Total expenses are per the District’s audited financial statements for each respective year; these amounts exclude future commitments of the District related to post-retirement obligations.

⁵ Total revenues are per the District’s audited financial statements for each respective year.

⁶ Computed as 2008 District tax levy of \$7,339,343 divided by 2008 total tax parcels of 10,861.

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property owners whose garbage is picked up by the Town of Hempstead was \$420.⁷ The cost per ton for the District was \$262 in 2007, compared to \$251 per ton for the Town of Hempstead.⁸ The Town of Hempstead provides curbside refuse pickup two times per week and recyclables pickup once per week in all areas of the Town except Merrick/North Merrick where backdoor service is provided; in contrast, the District provides curbside refuse pickup three times per week, and recycling pickups twice a week.

Audit Scope, Objective, and Methodology

The scope of our audit included an examination of the District's administrative policies and procedures; procurement and investment practices; and an analysis of its budgets, operating costs and the appropriateness of its fund balance for fiscal years 2006, 2007, and 2008. We conducted a review of the District's internal controls over cash receipts, cash disbursements, payroll, time and leave, bank accounts and bank reconciliations, and fixed assets. Our review of the internal controls was conducted to provide us reasonable assurance that there were adequate safeguards in place to protect the District's assets. The scope of the review generally covered the period January 1, 2006 through December 31, 2008; in limited instances the review extended through May of 2009, while our fieldwork at the District was still in progress.

Our audit methodology included reviewing policies and procedures, interviewing District personnel for procedures performed and the delegation of responsibilities, and examining documents and records. The General Sanitation Supervisor and the District accountant were to be the primary contacts throughout the audit. The General Sanitation Supervisor was often uncooperative when responding to our requests for information or answering our questions and, at times, verbally hostile and abusive to the auditors. In addition, we interviewed each Commissioner separately to ask whether there were any concerns that they may have with the operation of the District; we also made them aware of difficulties encountered during the audit that delayed completion of the fieldwork.

We reviewed the internal controls of the District to determine if there was:

- Proper governance and independent oversight of District operations and financial activities by the Board of Commissioners;
- Policies and procedures established in written manuals to address employee responsibilities, limits to authority and control procedures, supervisory approval, and supporting documentation;
- Proper supervision and approval steps to ensure accurate transactions, minimal errors, and to achieve financial and operational objectives; and
- Complete and appropriate supporting documentation to evidence that:
 - Accounting records are reliable and accurate; and
 - Payroll and time and leave records are accurate, completed timely, reviewed, and approved by senior staff.

⁷ Computed as 2008 Town of Hempstead, Lido Beach and Merrick/North Merrick Sanitation Districts tax levies divided by 2008 total tax parcels.

⁸ Consolidation Analysis and Implementation Plan: Solid Waste, June 2008, Malcolm Pirnie, Inc.

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Our review of the District's internal controls revealed a lack of Board oversight, inadequate segregation of duties, and deficient written procedures over the administration of compensation and fringe benefits. These internal control weaknesses provided the opportunity for the audit findings addressed in this report to occur. This audit report consists of the findings noted during the course of the audit, and the related recommendations, regarding District compensation and fringe benefits.

Summary of Significant Findings

District Elections

As of 2009, there were 9,986 residential properties in the District. The 2007 and 2008 elections drew 175 and 109 voters, respectively. Notices of election were no larger than a newspaper legal notice clipping and were not always posted in well-trafficked areas.

The District does not have written policies and procedures covering the election process. District employees acted as election workers in the election of Commissioners, who determine the promotions and negotiate the union contract for these same employees.

No Conflict of Interest Policy to Govern Employees Related to One Another

The District does not have a written Code of Ethics or a Conflict of Interest policy covering avoiding conflicts of interest that may arise among co-workers who are related. We found eight District employees with apparent family relationships. In four instances, two employees had the same last names and two live at the same address. A father and son succeeded one another as the District's General Sanitation Supervisor ("GSS").

The father ("the former GSS", "the father" or "the consultant") hired his son ("the current GSS" or "the son") as a Sanitation Supervisor. Two months later, the son was promoted to Senior Sanitation Supervisor and eight months after that he was promoted to GSS, to replace his father who had just retired. Although the Board approved the promotions, the application for his hiring and the Civil Service form to effect his promotion to Senior Sanitation Supervisor were both signed by the father as the appointing officer. Immediately on hire, the son received five weeks of vacation and personal use of a District owned vehicle. Later, the Board granted the son whole life insurance and 15 years of post-retirement payments characterized as deferred compensation. We believe that the hiring of the son, his rapid promotion, and the grant of unusual benefits to him presents an actual or apparent conflict of interest.

The Board granted the father a consulting contract. One of the father's current responsibilities as consultant to the District is to advise on labor negotiations. Since the former GSS' son is a member of the CSEA bargaining unit, this too, presents an actual or apparent conflict of interest.

Disparate Treatment of District Employees

District employees are represented by two unions – the Civil Service Employees Association ("CSEA") Local 880 and the International Brotherhood of Teamsters ("IBT") Local 854. We found that certain important benefits are significantly more generous for the supervisors and office workers in the CSEA bargaining unit than for the sanitation workers in the IBT local.

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Under the CSEA agreement, employees may accumulate up to 800 leave days. They are entitled to payment for unused accumulated days when they leave District employment or may buy back this time while still employed by the District. The IBT agreement permits employees to accumulate 250 leave days.

The two unions also have different rules for vesting the right to retiree health insurance. The CSEA has no minimum term of service before vesting the right to lifetime health benefits in retirement; IBT employees are required to work for a minimum of 20 years.

Employees Permitted to “Buy Back” Leave Time While Still Employed by the District

Under the terms of both union agreements, employees can surrender a portion of their accumulated leave balances each year. The District pays the employees for each surrendered day at their current rate of pay. The greatest benefit from this virtually unlimited leave buy back program accrues to employees who routinely earn compensatory (“comp”) time.

We found no evidence that a policy governing buying back time existed. Specifically, we found no evidence that: a buy back form is used; written approvals are required; the minimum number of leave days on the books before and after the buy back are checked; that a supervisory review is done to determine that the amount of the buy back is computed accurately; and the equivalent number of buy back days are adjusted in the leave usage records in a timely manner.

We found that the District paid employees \$385,292 during the audit period to buy back accrued leave and comp time. In our test sample of 12 of the District’s 57 employees, we found that 8 employees received buy backs during the audit period. The largest buy back payment was for 75, 75 and 92 comp days to the GSS in 2006, 2007, and 2008, respectively. The following chart summarizes these payments:

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SUMMARY OF BUY BACK PAYMENTS						
Job Title	2006	2007	2008	Total	Base Salaries (2006-2008) *	Buy Back as % of total 3-year salary
Current GSS	\$ 39,003	\$ 40,564	\$ 51,748	\$ 131,315	\$ 422,077	31%
Senior Supervisor	16,634	29,771	46,804	93,209	388,036	24%
Secretary	16,836	17,797	18,797	53,430	276,171	19%
Clerk	9,205	-	-	9,205	251,076	4%
Building Maintenance Supervisor	-	33,270	-	33,270	305,461	11%
Maintenance Helper	-	-	9,332	9,332	136,077	7%
Sanitation Worker (1)	-	24,658	-	24,658	192,331	13%
Sanitation Worker (2)	-	17,538	13,335	30,873	189,998	16%
Total	\$ 81,678	\$ 163,598	\$ 140,016	\$ 385,292	\$ 2,161,227	18%

*Base salaries exclude buy back payments.

Source: Buy Back payments data from Sanitary District No. 7. The Base Salaries were based on the Annual Certification of Salaries provided to Nassau County Civil Service.

Post-Retirement Compensation

Retired General Sanitation Supervisor

During the audit period, the former GSS received approximately \$75,000 annually from the New York State and Local Employees Retirement System (“NYSLERS”) as a pension. He also received two additional annual payments from the District: a \$36,000 payment as a consultant and a \$26,218 payment characterized as deferred compensation. When we requested support for the consulting and the deferred compensation arrangements, we were provided only with copies of notes to the audited financial statements. The note indicated that the consulting contract was with a company named Assistance Corporation, for which the former GSS is Chairman of the Board. The District did not provide us with a contract or copies of Board minutes approving either arrangement.

Consulting Arrangement

Total payments made to Assistance Corporation, from inception of the consulting agreement in January 1999 through September 2009, were \$325,750. The District also provided the consultant the use of a cell phone. During the audit period, he received a total benefit of \$33,455 related to the health and dental insurance, and the cell phone. For 2006, he declined health insurance coverage and received \$5,000 for exercising his option to “buy back” his opportunity to have health insurance. In 2007 and 2008, he opted to be covered by the District’s health insurance plan.

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Deferred Compensation Arrangement

The District's total obligation for deferred compensation to the former GSS is \$393,255. His beneficiaries will receive all unpaid installments of the deferred compensation arrangement should he die before the 15 annual payments are made to him.

The chart below summarizes the former GSS' compensation and benefits package:

Former GSS				
	Cost to District			
Payments and Benefits to Former GSS	2006	2007	2008	Total Audit Period
Consultant (Assistance Corp)	\$ 36,000	\$ 36,000	\$ 36,000	\$ 108,000
Health Insurance Buy Back	5,000	-	-	5,000
Deferred Compensation	26,218	26,218	26,218	78,654
Total Payments	\$ 67,218	\$ 62,218	\$ 62,218	\$ 191,654
Health and Dental Insurance & Cell Phone	1,636	15,618	16,201	33,455
Total Payments and Benefits	\$ 68,854	\$ 77,836	\$ 78,419	\$ 225,109
Future Obligated Payments to former GSS*				Total
Deferred Compensation payments remaining (years 2009-2013)				\$ 131,075
Total Current and Future Compensation and Benefits*				\$ 356,184
<i>* excludes any future health/dental coverage provided post-retirement</i>				

As noted in the chart above, during the audit period the former GSS received total payments from the District of \$191,654. These payments were in addition to his NYSLERS pension.

Current General Sanitation Supervisor – Unusual Payments and Benefits

The current GSS' gross wages in 2006, 2007, and 2008 were \$199,665, \$197,175, and \$224,569, respectively. His salary in each year was \$135,212, \$140,620, and \$146,245, respectively. The gross wages included bonus payments, buy back of compensatory time, and payment for life insurance premiums.

Bonus Payments

In both 2006 and 2008, these amounts included a Board approved one-time bonus of \$10,000. The District's Commissioners and consultant (the recipient's father) stated that they were bonuses for a "job well done" and "superior performance of duties". The GSS was the only District employee who received bonuses during the audit period.

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Life Insurance

The District purchased two \$300,000 whole life insurance policies on the life of the current GSS, six months before he was promoted to be GSS, one with an option to purchase paid up life insurance. There is no statutory authorization for individual life insurance policies. The Board also approved transferring ownership of one of the life insurance policies to the GSS, and pays him \$15,000 per year to cover the cost of the \$9,548 annual premium and the applicable taxes. This resulted in additional expense to the District of \$17,607 for the audit period 2006-2008. As we were not provided with the terms of the arrangement between the GSS and the District, we do not know how long the District will continue to pay the premiums.

The District continues to hold the second life insurance policy with the District as beneficiary, however, should the GSS die while employed by the District, a lump sum death benefit of \$250,000 will be paid to his beneficiaries. This payment will be funded by the proceeds from the \$300,000 life insurance policy retained by the District. To the extent life insurance was obtained to fund a payment to beneficiaries, it may have violated New York State Civil Service Law section 201(4) and Retirement and Social Security Law section 470. Upon the GSS' retirement, the District will cancel this policy and pay the GSS 10% of its net cash value.

Including the death benefit provided by the NYSLERS, which is provided to all participating State and Local employees, the GSS' beneficiaries could potentially receive over \$1.2 million in death benefits should he die while employed by the District.⁹

Deferred Compensation

Even before the current GSS' promotion to GSS, the Board agreed to set up what has been characterized by the District as a deferred compensation arrangement, as a post employment benefit. We were advised that there is no written agreement. The only supporting documents provided to us were the June 4, 1998 Board minutes and Note # 3B to the 2006, 2007 and 2008 audited financial statements. As described in these documents, the GSS will be entitled to receive \$25,000 per year for 15 years; any unpaid installments upon his death would be paid to his beneficiaries. The annual benefit increases 10% for each year after March 1, 2008, until he attains the age of 65. The district recorded a liability of \$299,530 as of December 31, 2008, which represents the present value of this arrangement at a 4.74% interest rate.

The GSS is also entitled to a pension from the NYSLERS upon his retirement from the District. We estimated his annual pension at \$124,000 based on 60% of his average gross compensation (excluding the shoe and optical allowance) for the period 2006-2008.

⁹ The \$1.2 million represents the NYSLERS death benefit (computed as 3 times the current salary, which was estimated at \$673,707 using 2008 annual salary) plus the proceeds from the two life insurance policies.

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Other Unusual Benefits

Upon his hire as a Sanitation Supervisor, the Board granted the current GSS 5 weeks of vacation time. The CSEA contract requires that employees work 16 years before they are entitled to earn 5 weeks vacation. The current GSS was also immediately given personal use of a District owned vehicle. We found no evidence that any other Sanitation Supervisor, his title on hire, was given a District owned vehicle. The lease payments on this vehicle for the audit period were approximately \$3,354.

The General Sanitation Supervisor is a member of the CSEA Local 880 bargaining unit. The collective bargaining agreement does not authorize different payments and benefits for the GSS than those paid to other members. The extra pay and benefits described in this section may present a violation of New York State law governing collective bargaining for government employees and may be an unconstitutional gift of public funds.

The following chart summarizes the current GSS' compensation and benefits package:

GSS Compensation and Benefits				
Compensation or Benefit Type	2006	2007	2008	Total Audit Period
Annual Salary	\$ 135,212	\$ 140,620	\$ 146,245	\$ 422,077
Year-end Salary Adjustments	-	541	1,126	1,667
Buy Back of Comp Time	39,003	40,564	51,748	131,315
Bonus Payment	10,000	-	10,000	20,000
Payment for Life Insurance Premium	15,000	15,000	15,000	45,000
Shoe & Optical Allowance (a)	450	450	450	1,350
<i>Total Compensation (as per W-2)</i>	<i>\$ 199,665</i>	<i>\$ 197,175</i>	<i>\$ 224,569</i>	<i>\$ 621,409</i>
Health and Dental Coverage	14,293	15,261	16,200	45,754
Total Compensation & Benefits	\$ 213,958	\$ 212,436	\$ 240,769	\$ 667,163
Future Obligated Payments to GSS*				Total
Deferred Compensation at present value as of December 31, 2008				\$ 299,530
Total Current and Future Compensation and Benefits*				\$ 966,693

* excludes any future health/dental coverage provided post-retirement .

Note (a) The shoe and optical allowances, \$150 and \$300 respectively, are available to all CSEA employees of the District, including administrative staff. The IBT employees receive a \$300 allowance for shoes and optical.

Personal Use of District Vehicles and Reporting of Imputed Income to the IRS

There are no written guidelines at the District covering personal use vehicles and no personal use records are kept. A leased vehicle provided to the GSS does not bear an official license plate and there is no District seal affixed on it. The Senior Supervisor takes home a District-owned vehicle

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that has official plates, but no district seal; a Board resolution authorizing a take home vehicle for the Senior Supervisor could not be found. A review of the 2006, 2007, and 2008 W-2s issued to these two employees indicated that the District did not include the imputed value for the personal use of the vehicles and as a result, the income reported for the two employees assigned take home vehicles might have been understated for the period under review.

Under-reporting of Taxable Benefits for Employee Health Insurance Buy Backs

The District pays \$5,000 per year to employees who are eligible for health insurance coverage but elect to decline coverage. These payments, which are subject to payroll withholding and FICA¹⁰, were not included in taxable wages in the District's quarterly IRS Form 941¹¹ filings for all employees paid the buyout. In all, the District did not include \$40,000 of these taxable benefits in its Form 941 tax filings (\$25,000 in 2006 and \$15,000 in 2007). We were unable to locate any evidence that the Form 941s were amended to include the wages reported on the employees' W-2s¹².

Attendance Records are not Maintained for Commissioners, Supervisors and Administrative Employees

The District does not keep a daily record of the hours worked for its Commissioners and administrative employees. In addition, the Secretary, who acts as timekeeper for other employees, maintains her own leave usage records.

The amount of comp time claimed by the GSS is extraordinary. During the audit period of 2006 - 2008, he claimed 54, 55, and 56 days of comp time in each year, which included virtually every Saturday. Similarly, the Senior Supervisor claimed a total of 153 comp days during the audit period. These two employees received the largest accrued time buy back payments during the audit period - \$131,315 and \$93,209 respectively.

Sanitation Workers Work Reduced Hours

Sanitation workers (drivers and helpers) are permitted to clock out before the end of their eight-hour workday even though their collective bargaining agreement defines their workday as eight hours. We found that they worked fewer than eight hours but were paid for a full day of work. We examined time records for six sanitation workers for 18 pay-periods during the period 2006-2008 (six pay periods per year) and found they were paid for 863 hours that they did not work.

Inappropriate Expenditures for Food and Catered Meetings

We noted inappropriate purchases paid for with District funds. We examined nine claim vouchers charged to the General Office account for the period 2006 through 2008 totaling \$7,104 and noted that seven of the nine included catered food, coffee, soda, and related supplies (i.e., paper plates, cutlery) purchased for a total of \$6,233.

¹⁰ FICA is comprised of Social Security and Medicare taxes.

¹¹ IRS Form 941 is the Employer's Quarterly Federal Tax Return.

¹² IRS Form W-2, Wage and Tax Statement.

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Our review of credit card and petty cash expenditures showed that the District purchased a coffee maker and filters from Ace Hardware for \$35 and made a \$28 purchase of candy and tissues from Staples. Our examination of petty cash vouchers for the period 2006 through 2008 indicated that 13 petty cash vouchers valued at \$252 were for supermarket purchases of food and condiments such as butter, balsamic vinegar, and onions.

The matters covered in this report have been discussed with the officials of the District during this audit. On October 6, 2009, we submitted a draft report to the District with a request for comments. The District declined our offer for an exit conference. The District's written comments, received on October 26, 2009, and our responses to those comments, are included as an appendix to this report.

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Audit Finding (1):

District Elections

The District is governed by a Board of five Commissioners, each of whom is elected for a five-year term. District elections take place in June and are administered pursuant to Article 13 of New York State Town Law.¹³ The voter turnout for the 2007 and 2008 elections was 175 and 109 votes, respectively. As of 2009, there were 9,986 residential properties in the District¹⁴.

The District does not have written policies and procedures covering the election process. During the audit period of 2006-2008, the District retained the law firm of Bondi & Iovino to attend and monitor the election and open and close the polls. Under New York State law, notices of election must be published in one or more newspapers at least 20, but not more than 30, days before the election. A minimum of five notices must be posted in conspicuous places within the District at least 15 days prior to the date of the election.

Inadequate and Non-Conspicuous Posting of Election Notice

The District published the Notice of Election in one issue of a local weekly newspaper, the South Shore Tribune, approximately one month before the election. The same small Notice of Election newspaper advertisement was posted in the local fire department headquarters, the library, the post office, a railroad station and inside the District's main office.

District Staff as Election Workers

For both the 2007 and 2008 elections, District employees acted as election workers. The District Secretary signed the Oath of Chairperson, the Accountant signed the Oath of the Ballot Clerk, the Senior Supervisor was the deponent who posted the Notice of Election, and the front office Clerk signed the Oath of Inspector. The Statement of Canvass for the voting machines (certifying the number of votes cast) was signed by the same three employees as Inspectors of the Election. These employees work in the administrative office of the District. The District Commissioners, who determine these employees' promotions and negotiate their union contract, have an interest in the outcome of the election conducted by these employees.

Audit Recommendations:

The District should ensure that:

- a) election workers should be impartial and independent of the District;
- b) a notice of the upcoming election, larger than a newspaper legal notice clipping, should be posted in places that are frequently visited by a majority of the residents, such as supermarkets; and
- c) written policies and procedures covering the election process should be developed by the District.

¹³ NY Town L. §212 and §215 (2009).

¹⁴ Source: Nassau County Department of Assessment.

Audit Findings and Recommendations

Audit Finding (2):

Need for a Conflict of Interest Policy to Govern Employees Related to One Another

The District has employees who are related to one another. The District does not have a written Code of Ethics or a Conflict of Interest policy. A Conflict of Interest policy would normally instruct District employees on how to address and avoid conflicts of interest that may arise among co-workers who are related.

We found eight District employees with apparent family relationships. In four instances, two employees had the same last names and two live at the same address. A father and son succeeded one another as the District's senior manager, the General Sanitation Supervisor ("GSS").

The father ("the former GSS", "the father" or "the consultant") hired his son, ("the current GSS" or "the son"), on February 2, 1998 as a Sanitation Supervisor. The son was given an immediate right to five weeks of vacation, in contravention of the CSEA collective bargaining agreement, which required 16 years of employment to receive that length of vacation time, and personal use of a District owned vehicle. The son was promoted to Senior Sanitation Supervisor on April 6, 1998. The appointments were approved by the Board but the application for his hiring and the Civil Service form to effect his promotion were both signed by the former GSS, as the appointing officer. In June and July 1998, the Board voted to provide the son with a number of unusual benefits including whole life insurance and 15 years of deferred compensation after retirement from the District (See Audit Finding (6)).

In December 1998, the father retired from full-time employment as the District's GSS. As of January 1, 1999, he was rehired as a part-time consultant. Three weeks later, on January 27, 1999, the son was promoted to succeed his father as the District's GSS.

We believe that the former GSS' role in his son's hiring, the grant of unusual benefits to the son and the son's rapid promotion present an actual or apparent conflict of interest. Similarly, the grant of a part-time consulting contract to the former GSS immediately before his son was named the senior official in the District and the decision to "gross up" continuing payments to the former GSS to absorb his share of FICA tax without Board approval, also presents a potential conflict of interest. Finally, District officials informed us that one of the former GSS' current responsibilities as consultant to the District is to advise on labor negotiations. Since the former GSS' son is a member of the CSEA bargaining unit, this too, presents an actual or apparent conflict of interest.

On an internal control questionnaire the District completed at the request of the auditors, the District responded "No" to the question "Are any of the District's board members, management and/or staff directly or indirectly related to one another or to a third party who does business with the District?" This document contained the typed names of the GSS, Board Secretary-Treasurer, and the Board Chairperson.

Audit Recommendations:

Audit Findings and Recommendations

The District should:

- a) develop a Code of Ethics and Conflict of Interest policy to govern the hiring and supervision of relatives. The District's Code of Ethics and Conflict of Interest policy should address the need for disclosure of family relationships among officials and employees and provide guidance on how the District should handle any actual or potential conflicts of interest; and
- b) respond accurately to the internal control questionnaire.

District Commissioners should give special consideration to the role of the consultant in labor negotiations, noting that even the appearance of a conflict of interest should be avoided.

Audit Finding (3):

Disparate Treatment of District Employees

District employees are represented by two unions. Sixteen supervisors and office workers, including the highest-ranking employee, the GSS, are represented by Civil Service Employees Association (CSEA) Local 880. The District's 41¹⁵ drivers, helpers, and laborers are represented by the International Brotherhood of Teamsters (IBT) Local 854. Both union contracts provide for 13 sick days a year, two to five weeks of vacation depending on years of service and compensatory time ("comp time"). CSEA and IBT workers get five personal days, however, IBT workers employed after December 31, 2003 are allowed up to three personal days.

We found that two important benefits are significantly more generous for the supervisors and office workers in the CSEA bargaining unit than for the sanitation workers in the IBT local.

Payment for Unused Leave Entitlements

The CSEA agreement provides that employees may accumulate up to 400 days of vacation leave and up to a combined 400 days of sick leave, personal days, floating days, and compensatory time, for a total of 800 days. Employees are entitled to payment for unused accumulated days when they leave District employment or may buy back this time while still employed by the District (See Audit Finding (4)).

The IBT agreement does not permit employees to accumulate vacation leave. These employees may accumulate up to a combined 250 days of sick leave and compensatory time.

Retiree Health Benefits

The District provides all employees and Commissioners with health insurance through the New York State Health Insurance Plan ("NYSHIP"). Commissioners, IBT employees, and CSEA employees hired before 2007 do not make any contribution to the cost of health insurance.

¹⁵ There were 62 active employees as of December 31, 2008, including the 5 Commissioners.

Audit Findings and Recommendations

CSEA employees hired after January 1, 2007, contribute 10% to 15% of the health insurance cost for the first five and one half years of employment.

The District provides health insurance for its retirees without requiring any contribution, but the two unions have different rules for vesting the right to retiree health insurance. Employees covered by the CSEA agreement have no minimum term of service for vesting. Employees covered by the IBT agreement do not receive health insurance in retirement unless they have been employed by the District for a minimum of twenty years.

The District also provides non-contributory retiree health insurance to Commissioners who have over twenty years of service and are over 65 years old when they leave the District. The District's Commissioners voted to provide themselves with post-retirement health benefits although they work only the equivalent of one day per month.

Audit Recommendations:

The Board should reevaluate the terms and appropriateness of its union contracts as the bargaining agreements are renegotiated. Extraordinary benefits, such as no minimum length of employment before employees vest lifetime retiree health benefits and allowing employees to accumulate and be paid for 800 days of leave upon separation from employment should be reconsidered.

Consideration should be given to requiring the Commissioners to bear a portion of their health benefit costs both while working and in retirement.

Audit Finding (4):

Employees Permitted to "Buy Back" Leave Time While Still Employed by the District

Under the terms of both union agreements, employees can surrender a portion of their accumulated leave balances each year; the District pays them for each surrendered day at their current rate of pay. The agreements do not stipulate that the buy backs can only be offered for special circumstances, such as employee hardship. Employees may buy back no less than 25 days of accumulated leave per year and must have a minimum of 25 days of leave remaining after the buy back. CSEA employees are paid in the calendar year following their request at their then current rate of pay, which would include annual January 1st raises. IBT employees are paid no later than December 31st of the calendar year in which the payment is requested.

While long-time employees are likely to accumulate more leave days each year than they use, the greatest benefit from this virtually unlimited leave buy back program accrues to employees who routinely earn compensatory time.

Audit Findings and Recommendations

Examples of Employee Buy Backs of Accumulated Leave

We examined 2006-2008 salaries and wages for 12 of the District's 62 employees. Eight of the 12 employees in the sample received additional payments for buying back accrued time during the audit period.

As part of this review, we compared the base salaries certified annually with Nassau County Civil Service (Civil Service) to the amount reported in Box 1 (Federal Taxable Wages) of the employee's W-2. For eight of the 12 employees selected, the amounts reported on their W-2s exceeded the base salaries certified annually with Civil Service. The District had only established a regular pay category. Since all payments are shown as regular pay, the nature of payments (other than base pay) are not identified. Thus, in order to determine the nature of the amounts reported on the W-2's in excess of the base salary, we requested that the District prepare a reconciliation between base pay and the amount shown on the W-2 for each of the eight employees. The reconciliation provided to us by the Accountant indicated that the majority of the difference was due to buy back of time for payments totaling \$385,292.

We found no evidence that a policy governing buying back time existed. Specifically, we found no evidence that: a buy back form is used; written approvals are required; the minimum number of leave days on the books before and after the buy back are checked; that a supervisory review is done to determine that the amount of the buy back is computed accurately; and the equivalent number of buy back days are adjusted in the leave usage records in a timely manner.

The District's manually kept Employee Attendance Record and Microsoft Excel Attendance Report do not clearly identify the adjustments to accumulated leave when employees buy back time. As a result, the leave buy backs were difficult to identify and track, particularly since employees are not required to complete a request form for leave buy backs. Based on our review of daily leave reports and annual attendance cards, we computed the required adjustment for buy back days for six employees for each of the three years to determine that the adjustment was made in the leave records.

We determined that buy backs were properly credited for five employees. In one instance, involving the Senior Supervisor, we identified \$10,921 paid for 21 days of accrued leave that was not deducted from the employee's leave balances.

We were informed that the employee makes a verbal request to buy back time and the buy back is approved by the Board. We found several instances where there was no evidence of Board approval in the minutes. Since there is no buy back approval form, we could not determine who authorized these payments or approved their calculation.

- The current GSS received a total of \$131,315 in compensatory time buy backs during the period 2006-2008. In that same period, his base salary went from \$135,212 (2006) to \$146,245 (2008). No Board approval was recorded in the minutes for these buy back payments.
- The Senior Supervisor received a total of \$93,209 in sick, vacation, and compensatory time buy backs during the period 2006-2008. In that same period, his base salary went from

Audit Findings and Recommendations

\$123,567 to \$135,210. In each of the years audited, Board minutes indicated that the Senior Supervisor was granted Board approval to buy back some of his balances, however, his actual buy back was higher than approved; in 2006 he received payment for 25 days more than was granted approval by the Board; in 2007, 40 more days; and in 2008, 29 more days. Twenty-one of the days paid during the audit period were not reduced from his accrued leave balances.

- The Secretary received \$53,430 of buy backs during the period 2006-2008. No Board approval was evidenced in the minutes for the 2008 payment.
- The Building Maintenance Supervisor received \$33,270 in buy back payments in 2007. His base pay was \$101,768 in 2007.
- A Sanitation Worker received \$24,658 in buy back payments in 2007, for which no Board approval was evidenced in the minutes. A second Sanitation Worker received a total of \$30,873 in 2007 and 2008; again, evidence of Board approval was not noted in the minutes for either year.

Audit Recommendations:

The Board should re-consider whether these buy back payments provide any benefit for taxpayers when negotiating its future union contracts.

All leave buy backs should be made in conformance with the terms of the union agreements and Board minutes should document all leave buy back payment approvals.

The District should:

- a) develop and implement a leave buy back request form in order to ensure the buy backs are properly requested, reviewed, approved, and recorded in the time and leave records. The form should identify the leave days available, days requested and days approved.
- b) adjust the Senior Supervisor's leave accrual records to reflect the \$10,921 buy back payment or recover the payment.

Audit Finding (5):

Post Retirement Compensation - Retired General Sanitation Supervisor

During the audit period, the former GSS received \$75,341 from the New York State Retirement System as an annual pension. He also received two additional payments from the District: a \$36,000 payment as a consultant and a \$26,218 payment characterized as deferred compensation.

Post Retirement Employment

The former GSS was rehired as a consultant for the District effective January 1, 1999, after his retirement from his position as GSS. During the audit period, he was paid \$3,000 per month (\$36,000 per year) for his services. The payments were made to Assistance Corporation, which is owned by the former GSS (Chairman of the Board). When we requested a copy of the consulting contract, we were provided only with a photocopy of the notes to the 2007 audited

Audit Findings and Recommendations

financial statements, with “Assistance Corporation” typewritten in by the District, as the supporting evidence for the agreement. The District did not provide us with a written contract or copies of Board minutes approving a consulting agreement with the former GSS or Assistance Corporation.

According to the auditor’s Note, the consultant is entitled to “continued hospitalization and dental coverage.” The District cannot provide health insurance for a corporation but without reviewing the terms of the consulting contract, it is difficult to determine whether the District is obligated to pay for health insurance that would be obtained by the former GSS’ company.

The former GSS’ employment by the District individually or through Assistance Corporation, may not comply with sections 211 and 212 of the Retirement and Social Security Law,¹⁶ which set limits on New York State retirees working for a former public employer directly and under a contract. Further, the agreement to provide health insurance suggests that the former GSS is serving as an employee, not as an independent contractor.¹⁷

We were advised by the current GSS that the consultant’s role at the District included addressing trash receptacle issues, fielding requests from local community groups for planned activities, responding to problems at schools and participating in labor negotiations. The District declined our request for a written summary of the consultant’s duties and responsibilities.

Overpayment of Deferred Compensation

The 2006 – 2008 Board minutes disclosed that the former GSS received annual deferred compensation payments of \$ 26,218. When we requested support for the deferred compensation agreement, we were provided only with a copy of notes to the 2007 audited financial statements. The notes to the financial statements stated that the Board of Commissioners agreed to pay a deferred compensation of \$20,000 per year for 15 years in the event the former GSS retired after March 1, 1996. The notes indicated that the District allowed for the payment to be increased by 10% for each year he remained employed at the District after March 1, 1996. For services less than a full year, the increase was to be prorated. If the retired GSS died before 15 annual installment payments are paid to him, the District would continue to make the remaining payments to his beneficiary. The former GSS retired in 1998 and began receiving deferred compensation in 1999. The District’s total obligation for deferred compensation to the former GSS is \$393,255.

Our review determined that the District overpaid the deferred compensation. Deferred compensation is subject to tax withholding including FICA.¹⁸ The District disbursed the gross amount of \$26,218 to the former GSS rather than a net amount of \$24,212 after FICA deduction. The District then paid the employer and employee share of the FICA taxes. We found no evidence the Board authorized payment of \$26,218 rather than \$24,212 to the former GSS, or the

¹⁶ See N.Y. Retirement and Social Security Law, Section 211, 212 (2009).

¹⁷ See NY Comp. Codes R. & Regs. Tit 2. Section 315.2 (2009) (providing factors to be considered when determining if an individual is an employee or an independent consultant).

¹⁸ See 26 U.S.C. section 3101 *et seq.* (2009).

Audit Findings and Recommendations

gross benefit of \$28,388 appearing in his W-2. We also found that the District's calculation of FICA was incorrect.

The payment of the former GSS' share of FICA and the FICA calculation errors, cost the District an additional \$7,011 over the three-year audit period. This amount is comprised of the additional benefit to the former GSS of \$6,513 and the FICA computation error of \$498 to the District.

In the external auditor's 2007 Management Letter to the District, reference was made to the District's incorrect disbursement of the deferred compensation benefit. However, the District continued payment of deferred compensation without deducting FICA in 2008.

A review of the District's 2006 and 2007 quarterly payroll tax returns revealed that the deferred compensation earnings were reported in the 4th quarter instead of the 1st quarter when the disbursements were made. Late filing of the payments may expose the District to Internal Revenue Service late filing fees and withholding penalties.

Health Insurance "Buy Back"

As a retired District employee, the former GSS receives fully paid health insurance from the District. In addition, in 2006, the District also paid the former GSS \$5,000 to "buy back" his opportunity to have health insurance.

Cell Phone

On June 4, 1998, the Board provided that the retiring GSS would have the use of a District-funded cell phone. In May 2007, the District discontinued the cell phone service. The cost of the cell phone to the District for the period of January 2006 through its discontinuance was approximately \$1,214.

Audit Recommendations:

The District should:

- a) review the retired GSS' contract and deferred compensation agreement to ensure their appropriateness and legality under the State Retirement and Social Security Law;
- b) locate a written copy of both agreements;
- c) recover the over-payment of deferred compensation beyond what has been authorized by the Board;
- d) implement the recommendation of its CPA to report the amount of the retired GSS/Consultant's deferred compensation, \$26,218, as the gross compensation;
- e) withhold the correct FICA tax from this amount; and
- f) report the deferred compensation payments to the IRS in the quarter they were disbursed, in order to avoid potential penalties and interest.

Audit Finding (6):

Current General Sanitation Supervisor - Unusual Payments and Benefits

Life Insurance

On July 1, 1998, the District purchased two \$300,000 whole life insurance policies on the life of the current GSS, six months before he was promoted to be GSS, one with an option to purchase paid up life insurance. The State has authorized special districts to purchase group life insurance for their employees.¹⁹ There is no statutory authorization for individual life insurance policies, and the State Comptroller had stated, before a 2007 change of law authorizing the purchase of group policies by special districts, that special districts could not purchase individual life insurance policies for employees.²⁰

On February 5, 2004, the Board approved transferring ownership of one of the life insurance policies to the GSS, while continuing to hold the second life insurance policy with the District as beneficiary. Upon the GSS' retirement, the District will cancel this policy and pay the GSS 10% of its net cash value. As of December 31, 2008, the net cash value of the policy retained by the district was \$44,543 and the current GSS' share upon retirement is currently \$4,454.

The District also pays the GSS \$15,000 per year to cover the cost of the annual premium on the policy it transferred to him; the beneficiary on this policy is the GSS' wife. The annual premium is \$9,548. We were told that District grossed up the payment to cover all payroll taxes so that the net payment to the GSS would cover the full cost. This resulted in additional expense to the District of \$5,452 per year for a total of \$16,356 for the 2006-2008 audit period. In addition, the gross up resulted in an excess FICA expense to the District of \$417 per year or \$1,251 for the audit period. The overpayment by the District for 2006-2008 was \$17,607.

The annual premium on the life insurance policy retained by the District is \$4,548; considerably less than the \$9,548 annual cost of the policy transferred to the GSS. The GSS declined to provide us with a copy of his life insurance policy, rendering it impossible for us to perform a comparative analysis of the terms of the two policies and account for the significant difference in their premiums. This is in addition to the death benefit provided by the NYS Retirement System.

Bonus Payments

The current GSS' gross wages in 2006, 2007, and 2008 were \$199,665, \$197,175, and \$224,569, respectively. The Board minutes disclosed that in both 2006 and 2008, these amounts included a Board approved one-time bonus of \$10,000. Although the Board minutes did not disclose the reason for these payments, we were advised by the District's Commissioners and consultant (the recipient's father) that they were bonuses for a "job well done" and "superior performance of duties".

¹⁹ N.Y. Gen. Mun. L. section 93, (2009).

²⁰ See N.Y.S. Comptroller Opinion File No. 0591147 (March 23, 1993).

Audit Findings and Recommendations

Our review of the minutes disclosed that the GSS was the only District employee who received bonuses during the audit period. Further, we saw no evidence that the bonuses were included in the 2006 or 2008 District budgets. The bonus payment was not included in the annual certification of salary presented to the Civil Service Commission and may, for that reason, be in violation of Civil Service Law section 100.

Deferred Compensation

On June 4, 1998, six months before the current GSS' promotion to GSS, the Board agreed to set up a deferred compensation package as a post employment benefit for the current GSS. We were advised that there is no written agreement. The only supporting documents provided to us were the June 4, 1998 Board minutes and Note # 3B to the audited financial statements.

As described in the minutes and Note, the package includes:

- A post separation benefit in the event the GSS retires or severs employment from the District at any time after March 1, 2008. The GSS will be entitled to receive \$25,000 per year for 15 years. The annual benefit increases 10% for each year after March 1, 2008, until he attains the age of 65. In the event the GSS dies before the 15 annual payments have been made, his beneficiaries will receive the remaining installments. The district recorded a liability of \$299,530 as of December 31, 2008, which represents the present value of this arrangement at a 4.74% interest rate.
- A lump sum death benefit of \$250,000 payable to GSS' beneficiaries if he dies while employed by the District. This payment will be funded by the proceeds from the \$300,000 life insurance policy retained by the District. To the extent life insurance was obtained to fund a payment to beneficiaries, it may have violated New York State Civil Service Law section 201(4) and Retirement and Social Security Law section 470.

Other Unusual Benefits

Upon his hire as a Sanitation Supervisor, the Board granted the current GSS 5 weeks of vacation time. The CSEA contract requires that employees work 16 years before they are entitled to earn 5 weeks vacation. The current GSS was also immediately given personal use of a District owned vehicle. We found no evidence that any other Sanitation Supervisor, his title on hire, was given a District owned vehicle.

The General Sanitation Supervisor is a member of the CSEA bargaining unit. The collective bargaining agreement does not authorize different payments and benefits for the GSS than those paid to other members of the bargaining unit. In addition to the specific concerns about these payments, the extra pay and benefits described in this section may present a violation of New York State law governing collective bargaining for government employees and may be for that reason an unconstitutional gift of public funds.

Audit Recommendations:

The Board should review:

Audit Findings and Recommendations

- a) with its counsel, whether it is permitted to grant pay and benefits to members of the CSEA bargaining unit that are not authorized in the collective bargaining agreement and not granted to any other bargaining unit members; and
- b) the current GSS' deferred compensation agreement, the bonus payments, the insurance provided to the GSS, the payment of \$15,000 to the GSS to cover a \$9,454 premium and the lump sum death benefit to ensure their legality, appropriateness and necessity. If the Board determines they are inappropriate, the costs should be recovered from the GSS. If they are determined to be appropriate, they should be documented in writing.

Audit Finding (7):

Personal Use of District Vehicles and Reporting of Imputed Income to the IRS

There are no written guidelines at the District covering personal use vehicles. A review of the Board minutes revealed that in February of 1998 the Board resolved that because of the nature of his employment and responsibilities, the current GSS, then a Sanitation Supervisor, should have a District provided vehicle on a 24-hour daily basis. The resolution noted, "It is understood that he may be using the automobile for personal use."

The District currently provides the GSS with a leased 2007 Chevrolet Trailblazer. The lease term is 36 months with a total value of \$30,178. This vehicle does not bear an official license plate and a district seal is not affixed on it. Previously, the District provided the GSS with an owned 2001 Chevrolet Tahoe with an original cost of \$20,912 and a trade-in value of \$9,637 in 2007.

The Senior Supervisor takes home a District owned 2004 Chevrolet S-10 pickup with official plates, but no district seal. District senior staff were not able to locate a Board resolution authorizing a take home vehicle for the Senior Supervisor. We were told it could be used for commuting purposes and "around town" for District business.

A review of the 2006, 2007, and 2008 W-2s issued to the two employees indicated that the District did not include the imputed value for the personal use of the vehicles. When asked, District officials stated that they did not keep records of personal use of District vehicles. IRS regulations require that employers calculate the imputed income for personal and commuting use of a vehicle provided by an employer. As a result, the income reported for the two employees assigned take home vehicles might have been understated for the period under review.

Audit Recommendations:

The District should:

- a) develop a written policy covering permissible use of "take home" vehicles; and

Audit Findings and Recommendations

- b) ensure that it correctly reports imputed income as required by the IRS. If necessary, it should submit corrected W-2s for the two affected employees.

Immediate consideration should be given to placing a permanent District seal on the vehicle owned by the District and assigned to the Senior Supervisor, in order to identify it as such. In addition, the District should ensure that the leased vehicle assigned to the GSS is clearly marked and identified as a District vehicle.

Audit Finding (8):

Salaries and Wages: Under-reporting of Taxable Benefits for Employee Health Insurance Buy Backs

The District pays \$5,000 per year to employees who are eligible for health insurance coverage, but opt out if they can document that they are covered by health insurance elsewhere. These payments are subject to payroll withholding and FICA, and should be included in taxable wages in the District's quarterly IRS Form 941 filings.

- In 2006, the District made \$30,000 in payments in lieu of health insurance to six individuals (3 employees, 2 Commissioners, and a consultant who is the former GSS) of \$5,000 each. The payments were made in November and December and were processed manually by the District instead of through its ADP payroll service.
- In 2007, the District made \$20,000 in payments in lieu of health insurance to four individuals (2 employees and 2 Commissioners) of \$5,000 each. The payments were made in November and December and were processed manually by the District instead of through its ADP payroll service.
- Payroll withholding and FICA were not deducted from all but one of the payments.

The District prepared manual W-2s reporting the health insurance buy back amount for five of the six recipients in 2006 and three of the four recipients in 2007. In 2006 and 2007, one of the employees who received the buy back, had his payments included in his gross wages processed by ADP and the applicable taxes were withheld from his base pay. The other recipients were issued two W-2s, one manually prepared by the District for the health insurance buy back and one processed by ADP for salary and wages. The manually prepared W-2s did not report the buy back as taxable wages for FICA. This was cited as an exception in the 2006 Management Letter issued by the District's external audit firm; however, the 2007 Management Letter did not contain a similar comment even though this practice continued.

The District did not include \$40,000 of these taxable benefits in its Form 941 tax filings (\$25,000 in 2006 and \$15,000 in 2007). We were unable to locate any evidence that the Form 941s were amended to include the wages reported on the employees' manual W-2s. Tax liabilities due on the \$40,000 of benefits (at 15.3%) were \$6,120.

Audit Findings and Recommendations

Audit Recommendations:

The District should:

- a) perform a reconciliation of its quarterly Form 941 tax filing statements and its W-2 annual summary, and amend its 2006 and 2007 Form 941s for unreported wages and taxes;
- b) develop written procedures to ensure that its reconciliation and reporting process for health insurance buy backs is performed correctly and is consistently applied and followed; and
- c) ensure that future health insurance buy backs should be processed with normal payroll withholding through the District's payroll service.

Audit Finding (9):

Attendance Records are not Maintained for Commissioners, Supervisors and Administrative Employees

The New York State Comptroller requires that governmental employees record their hours worked and, in the case of elected officials, there are specific requirements for establishing the standard workweek and documenting time worked.²¹

The District does not keep a daily record of the hours worked, including starting and ending times, for any of its officials and administrative employees. These employees include the District's five commissioners, the GSS, Senior Supervisor, Building Supervisors, Accountant, Secretary, and Clerk. An additional lack of internal control was identified because the Secretary, who acts as timekeeper for other employees, maintains her own leave usage records.

The failure to keep any time records for certain District staff is particularly important because of the District's generous policy permitting employees to cash in accrued compensatory and leave time every year. Since office staff do not sign in and out, there is no record to show whether they worked less than a full day or if they worked at all. Comp time is noted on a sheet with a "w" to show that the employee worked that day. There is no record of why the comp time was needed or requirement that it be authorized by a supervisor. Without a record of the hours worked during the comp time, it is hard to know whether the employee worked a full day.

Further, the amount of comp time claimed by the GSS is extraordinary. During the audit period of 2006 - 2008, he claimed 54, 55, and 56 days of compensatory time in each year. His comp time included virtually every Saturday, and additional days as well. Similarly, the Senior Supervisor claimed a total of 153 comp days during the audit period. These two employees received the largest accrued time buy back payments during the audit period, \$131,315 and

²¹ N.Y. Comp. Codes R. & Regs. tit. 2, section 315.4 (2009); *E.g.*, Town of Newcomb Internal Controls Over Payroll Report of Examination 2008M-146.

Audit Findings and Recommendations

\$93,209 respectively. The GSS was paid entirely for accrued comp time, while the Senior Supervisor was also paid for sick and vacation time.

Beginning in March 2008, Board minutes include a monthly motion stating, “all District personnel recorded accrued time has been checked and verified.” We question how the Board can make this statement due to the absence of a daily record of hours worked for managerial, supervisory, and administrative staff.

Audit Recommendations:

The District should:

- a) require all employees to record their time daily, including starting and ending times, to provide more accurate oversight of District operations;
- b) comply with the State Comptroller’s requirements for timekeeping by elected officials;
- c) require employees to certify the accuracy of their time records; and
- d) not permit employees to work compensatory time without a supervisor’s approval and without a stated reason for the need to work outside of normal hours.

Audit Finding (10):

Sanitation Workers Work Reduced Hours

Sanitation workers (drivers and helpers) clock in and out at a time clock. The IBT Local 854 collective bargaining agreement defines their workday as eight hours. The District’s written Rules and Regulations provide that after completing their route the employees must clean their truck inside and out, the driver must complete a daily “drivers report” and the employees must check with a supervisor before punching out at the end of the workday. We found that sanitation workers worked fewer than eight hours but were paid for a full day of work.

We examined time records for six sanitation workers for 18 pay-periods during the period 2006-2008 (six pay periods per year). The following observations of hours worked versus hours paid were noted:

- 2006: Hours worked were 936, hours paid were 1,184, a difference of 248 hours;
- 2007: Hours worked were 1,117, hours paid were 1,416, a difference of 299 hours; and
- 2008: Hours worked were 1076, hours paid were 1392, a difference of 316 hours.

Audit Recommendation:

Since sanitation workers are clocking out before the end of their eight-hour workday, the District should consider extending or combining routes, or identifying other appropriate work for the employees to perform during the time they are paid.

Audit Finding (11):

Inappropriate Expenditures for Food and Catered Meetings

We noted purchases of coffee, catered meals, condiments, and refreshments made with District funds. We examined nine claim vouchers charged to the General Office account for the period 2006 through 2008 totaling \$7,104 and noted that seven of the nine included catered food, coffee, soda, and related supplies (i.e., paper plates, cutlery) purchased for a total of \$6,233. Exceptions included:

- In December of 2006, the District paid \$2,360 to a caterer for prepared food and reimbursed \$420 to an employee for the purchase of beverages and supplies (including soda, cutlery, and tablecloths). Board minutes noted that a joint meeting of the Board with employees/members of CSEA Local 880 and IBT Local 854 had been scheduled, with refreshments to be served.
- In November of 2007, the District purchased food and paper goods totaling \$249, with the claim voucher noting that the purchase was for the Thanksgiving holiday. Purchases of beverages, paper plates and cutlery, coffee, and \$2,160 of catered food were noted in October and December of 2007, totaling an additional \$2,735. Included in this amount was an October coffee purchase for \$175.
- In January 2008, the District paid \$74 for sandwiches and soda for employees.
- In December 2008, the District reimbursed an employee \$395 for the purchase of beverages, cookie platters, and napkins and cutlery from BJ's Wholesale Club.

Similar exceptions were noted in our review of credit card and petty cash expenditures. A credit card purchase at Staples and a purchase on account at Ace Hardware showed the District purchased a coffee maker and filters from Ace Hardware for \$35 and made a \$28 purchase of candy and tissues from Staples. Our examination of petty cash vouchers for the period 2006 through 2008 indicated that 13 petty cash vouchers valued at \$252 were for supermarket purchases of food and condiments such as butter, balsamic vinegar, and onions.

Audit Recommendation:

The District should adopt a written policy governing what expenditures, catered meals, food, beverages, and related supplies are permissible. In general, these personal expenses should be prohibited.

SANITARY DISTRICT NO.7
TOWN OF HEMPSTEAD
90 MOTT STREET
OCEANSIDE, NEW YORK 11572

October 26, 2009

Lisa S. Tsikouras, Deputy Director
Office of the Comptroller
240 Old Country Road
Mineola, New York 11501

Re: Audit of Sanitary District No.7

Dear Ms. Tsikouras:

This response is being filed on behalf of the District Board of Commissioners (the "Board") as a result of your Audit Findings dated October 6, 2009. The Board believes that your deadline for a response was arbitrary and more time would have been appreciated.

Your Report does not cite any incidences of defalcation or failure of disclosure. However, it does recommend changes in the operation of the Sanitary District No.7 ("District.") The District will consider making recommended changes, as well as those that might be where required in accordance with New York State Law.

Audit Finding (1)

District Elections

To correct your findings regarding the number of residential properties, the District services 11,396 residences with pick-ups of trash three times per week, and special pick-ups upon request, at a cost of approximately \$360.00 per residence. Not mentioned in your report is that District services 374 commercial establishments, 9 schools, 12 condominiums, 250 collections outside of the 11572 zip code, and 9 religious establishments.

Auditor’s Follow-up Response

The cost per parcel information presented in the report was derived by dividing the District’s tax levy by the number of parcels of property in the District. The Town of Hempstead-run districts’ sanitation costs, to which the District’s costs were compared, were calculated on that same basis.

Elections are held in accordance with Article 13 of New York State Town Law and supervised by the law firm of Bondi and Iovino to insure that there are no irregularities in the voting process.

Appendix – Sanitary District No. 7’s Response and Auditor’s Follow-up Response

The District takes under advisement your recommendations regarding the election process.

Auditor’s Follow-up Response

We concur with the District’s plans to consider our recommendations regarding the election process including formalization of the election process and efforts to encourage voter turnout.

Audit Finding (2)

Need for a Conflict of Interest Policy to Govern Employees Related on One Another

The District does not have a written policy; however hiring is done with the intend [sic] of filling the position with an individual qualified to do so. The Board examines and approves all recommendations for employment. Relationships, last names and addresses, are not considered in hiring.

The current General Sanitation Supervisor ("GSS") was hired on February 2, 1998 as a Sanitation Supervisor (Civil Service does not allow for two GSS) with the intention of replacing his father, who was the former GSS who retired in December, 1998. Prior to coming to the District, the current GSS was employed for more than twenty years by the Town of Hempstead Department of Sanitation and was a Supervisor at the Landfill in Oceanside, New York. His background of experience more than qualified him for this position. To induce him to accept this position, the Board offered him a salary and benefits commensurate with the responsibilities of the GSS. The retiring GSS was retained as a part time consultant not only to achieve a smooth transition but to take advantage of his expertise. He is invaluable in labor negotiations and providing insights in dealing with the number of vendors and equipment issues. The Board is actively involved when it comes to labor negotiations to insure that the District's interests are protected.

Regarding a response to an Internal Control Questionnaire completed at the request of the Internal Auditors, the District inadvertently responded "NO" to the questions regarding relationships between Board Members, Management, and or third parties doing business with the District.

Your comments regarding a written policy concerning a Code of Ethics and Conflict of Interest deserves consideration.

Auditor’s Follow-up Response

We concur with the District’s plans to consider our recommendations to develop a written Code of Ethics and Conflict of Interest Policy. We reiterate our recommendation that the District avoid even the appearance of a conflict of interest in the role of the consultant in labor negotiations.

Audit Finding (3)

Disparate Treatment of District Employees

The District has fortunately been able to maintain harmonious relations with its personnel and believes that its employees are responsible for making the District an exemplary one, the envy of other Sanitation Districts. We are certain that a survey of the residents of Oceanside would support our belief that we provide the very best service to the community. As an indication of this, rarely has the District received complaints about service.

The District employees are represented by two unions, i.e., the Civil Service Employees Association (CSEA) local 880 and the International Brotherhood of Teamsters (IBT) local 854. Both Union Contracts are negotiated with the Union Representatives and although there may be differences in their contracts, the Representatives reached their conclusions which they believed to be in the best interests of their constituents. To reiterate, the Board has input and approves all Union Contracts on behalf of the District.

The Audit points out that the CSEA Agreement provides that an employee may accumulate 400 days of vacation leave for a total of 800 allowable accumulated time, which includes, sick leave, personal days, etc., while the IBT agreement does not allow for the accumulation of vacation days and allows for 250 days of sick days, personal days, etc. The District strongly resists allowing the IBT employees to accumulate vacation days because it would be extremely difficult to schedule trash collection.

In regard to the health insurance provided to employees and Board through the New York State Insurance Plan, it is similar to the plan adopted of the Town of Hempstead. As to the Employee Retirees, this is a negotiated item with the Unions.

The District believes that it is not unreasonable to provide non-contributed health insurance to Retiring Board who have served for over twenty years and are over 65 years of age when they leave the District. The service of the individual Board Members well exceeds the time stated in the Audit.

The District takes under advisement the Audit recommendation that the Board Members bear a percentage of their health insurance costs.

Auditor’s Follow-up Response

We reiterate our recommendation that the District reevaluate the terms and appropriateness of its union contracts. The District should seek to negotiate a CSEA contract with terms more closely following the terms of its IBT contract.

We concur with the District’s plans to consider our recommendations regarding a requirement for Commissioners to contribute toward their health care costs.

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Audit Finding (4)

Employees Permitted to "Buy Back" Leave Time While Still Employed by the District

It must be emphasized that the objections that the Audit Report finds in the provision for "Buy Back" for compensatory time **is governed by contractual agreements with both employee unions**. Further, it is incorrect to state that there is no "Buy Back" approval form. Such a form exists and was shown to the Auditors.

The provision for "Buy Backs" for Local Union No. 854 IBT is found in Article VII "Sick Leave and Buy Back" and found in Local Union No. 882 CSEA Article IX "Buy Back." The provision provides in each case that a request by an employee for the District to "Buy Back" compensatory time, if made after August 15th of a given year, is automatically accepted and Board approval is not required. In the event a request is made to the District before August 15th, Board approval is required. In both cases a "Buy Back" form is completed by the employee and kept in the District office. This should help to clarify any misunderstanding regarding "Buy Back" procedure.

The District will review the finding that a Senior Sanitation Supervisor was paid for compensatory time which was not deducted from his leave balance. If this is so, it will definitely be corrected.

Auditor’s Follow-up Response

We were not provided with a copy of a buy back form, nor did we see any evidence to indicate that such a form is used. We reiterate our recommendations that the Board minutes memorialize the Board’s buy back decisions and that the Board reconsider whether these buy back payments are in the best interest of taxpayers. While the CSEA agreement allows the buy back of time, the District should take steps to ensure that no abuse takes place in the accumulation of time.

We concur with the District’s plan to review the leave balance of the Senior Sanitation Supervisor.

Audit Finding (5)

Post Retirement Compensation -Retired General Sanitation Supervisor

Post Retirement Employment

The terms and conditions of the Consulting Agreement between the District and the Retiring GSS, effective after his retirement in January, 1999, was discussed and approved in Executive Session on June 4, 1998. The minutes of this meeting recorded the understanding of the parties.

It is important to note that this Consulting, Agreement, as well as other financial arrangements alluded to in this Audit, were recorded in the "Financial Statements for the

Year Ended December 31, 2008. The Accountant's Report, besides describing the financial condition of the District, includes copious foot notes regarding the operation of the District. This report was given to the Nassau County Comptroller, as it has been each year for more than twenty years. During this time, not once, has any objection been made regarding any aspect of the Financial Report.

The Auditor's note is incorrect in the conclusion that the Consultant, by its Corporation, is being provided with hospitalization and dental coverage. The Consultant is entitled to these benefits as a Retiree from the District. The former GSS is being retained as a Consultant through his Corporation, and such retention is in compliance of Sections 211 and 212 of the Retirement and Social Security Law.

The District, will formalize the Consultant's duties and responsibilities that are being performed.

Auditor’s Follow-up Response

Notes to audited financial statements and Board minutes do not constitute a contract. We concur with the District’s plan to formalize the consultant’s duties and responsibilities and recommend that it be done in the form of a written contract.

Overpayment of Deferred Compensation

The District will correct the Auditor's Finding regarding an overpayment of compensation because of the incorrect treatment of a deduction of FICA and the appropriate quarterly reporting per Form 941.

Auditor’s Follow-up Response

We concur with the corrective actions to be taken by the District.

Health Insurance "Buy Back"

The former GSS, who was entitled to Health and Dental Insurance as a Retiree from the District, was paid \$5,000.00 in lieu of receiving this benefit. All others who are entitled to dental and health insurance who opt out of our plan receive the \$5,000.00. He **did not receive both** Health and Dental Insurance and \$5,000.00. The \$5,000.00 payment saved the District approximately \$10,000.00

Cell Phone

The Retired GSS was provided and was allowed to use the District Cell Phone for District purposes. However this was discontinued as noted in May 2007.

The District will investigate the Deferred Compensation Agreement to insure its legality under the State Retirement and Social Security Law. In addition, the District will be in touch

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with its Accounting firm to discuss the treatment of the compensation for tax purposes to comply with Internal Revenue rules.

Regarding your other comments, the District will take them under advisement.

Auditor’s Follow-up Response

We concur with the corrective action suggested by the District with respect to the post employment annual payments for the former GSS.

Audit Finding (6)

Current General Sanitation Supervisor -Unusual Payments and Benefits.

Life Insurance

The Life Insurance policies on the GSS exist as reported in the Financial Statements for the year ended December 31, 2008 and as submitted to the Comptroller's office. The Audit Report is consistent with the Financial Statements. The District will investigate this situation and will take the appropriate steps to comply with existing New York State Law.

Bonus Payments

The gross wages reported for the GSS for 2006, 2007, and 2008 include the base salary plus "Buy Back" of accumulated compensatory time. Gross wages for the years 2006 and 2008 included a \$10,000.00 bonus for each year. Board minutes reflect the approval by the Board of the bonus. These bonuses were given by the Board for superior performance in the position. The budget that was compiled for the District included the possibility of granting a bonus.

The District will make further inquiry as to how bonuses are to be reported to the Civil Service Commissioner.

Deterred Compensation

The Deferred Compensation Plan as noted in the Audit Report is correct. At the present time it is the District's Opinion that the Plan is not in conflict with State Law. However, the District will confirm its understanding.

The Audit Report in reporting the Foot Note 5 of the Financial Statements correctly states the existence of life insurance contracts. The District will review this situation to ascertain that it is in accordance with State Law.

Other Unusual Benefits

The five weeks vacation immediately granted to the Sanitation Supervisor upon his employment was the same vacation period allowed to him when employed by the Town of Hempstead prior to coming to the District.

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The Audit comment regarding the use of the automobile by the GSS, though admittedly not given to any other Supervisor, was done for the convenience of the District because of the requirement that the GSS be out of the office on District business on numerous occasions. The District will confirm its understanding that this arrangement is not in violation of New York State Law.

Auditor’s Follow-up Response

The District’s response does not address our concern about the legality of granting pay and benefits to employees that are not authorized in the collective bargaining agreement and are not granted to any other bargaining unit members.

The District’s response does not address our concern that there is no written agreement documenting the deferred compensation plan.

We reiterate our recommendations to review the legality of the pay and benefits outside of the collective bargaining agreement, and to recover payments made to the GSS should it be determined that they are a violation of the law.

We concur with the corrective actions to be taken by the district to comply with existing New York State Law, which prohibits the purchase of individual life insurance for its employees.

Audit Finding (7)

Personnel Use of District Vehicles and Reporting of Imputed Income to the IRS

The Board takes under advisement the recommendations noted in the Audit Report regarding the use of the automobile that the District has provided to the GSS for the convenience of the District, but may very well be used on occasion for personal use. The District will also contact the Certified Public Accounting Firm to ascertain the rules regarding Imputed Income.

Auditor’s Follow-up Response

We concur with the District’s plans to consider our recommendations.

Audit Finding (8)

Salaries and Wages: Under-reporting of Taxable Benefits for Employee Health Insurance Buy-Backs

The District will ascertain the correct manner for reporting to the Internal Revenue Service the payment of \$5,000.00 made in lieu of participating in the Districts health insurance plan. It appears that FICA was not deducted from the payment in accordance with a 2006

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Management Letter issued by the District's CPA firm. This practice has continued though there is no mention of it in subsequent Management Letters. The District will contact the Accounting firm to ascertain the correct method for reporting. The District will further investigate the Auditor's inability to locate evidence of the payments being reported to the IRS on the filing of the Form 941 for the respective periods.

The District will communicate with its Payroll Service to establish a procedure for reporting Health Insurance "Buy-Backs."

Auditor’s Follow-up Response

We concur with the corrective actions to be taken by the District.

Audit Finding (9)

Attendance Records are Not Maintained for Administrators, Supervisors and Administrative Employees

During the year 2006 the Office of the State Comptroller of the State of New York audited the District for the period of January 1, 2003 through January 1, 2005 to determine whether the District has established appropriate internal controls of reporting of Retirement Service Credits to the New York State and local Employees’ Retirement System (NYSLERS).

By letter dated January 7, 2007 the Comptroller's Office stated the following:

"Our audit found that the District, in general, is reporting employee retirement service credits in accordance with NYSLERS guidelines."

However, they did identify some improvements that the District should make to be in full compliance. In accordance with their recommendations, the District implemented their recommended procedures which included how to account for the time of elected officials. These procedures were submitted to the State Comptroller's office which was subsequently accepted as satisfactory.

There are no daily time records kept for Supervisory and Administrative Personnel. However they are entrusted with ensuring that all personnel are on the job at their required time and perform the duties for which they are being paid.

In response to the question raised regarding the Compensatory Time accumulated by the GSS and Senior SS, it needs to be noted that it is necessary that they be present six days a week given the fact that there is trash collection on Saturdays as well.

This issue of time records and who shall be responsible for keeping them shall be discussed by the Board and clarified.

Auditor’s Follow-up Response

The District’s response does not address our concern that there are no controls in place to ensure that employees only earn compensatory time when necessary and that the compensatory time claimed is actually worked.

The District’s response indicated that it is necessary for the GSS and Senior SS to work six days per week. If that is so, it should have been considered as a job requirement and the employee’s base compensation should have considered the requirement. Alternatively, the District should consider shift changes so that there is adequate coverage for all days without need for compensatory time every Saturday.

We concur with the District’s plan for the Board to discuss time keeping requirements.

Audit Finding (10)

Sanitation Workers Work Reduced Hours

Sanitation workers who are represented by Local 854 IBT are contracted to work a forty (40) hour week. The District encourages the employees to complete the job as quickly, efficiently and safely as possible and get the sanitation trucks off the street and into the garage. The pay scale recognizes that this is a labor intensive "Task Oriented" position.

By removing the sanitation vehicles off the street as quickly as possible, the District saves on costly gasoline, and the cost of maintenance. In addition, and most importantly, for the safety of the community, by getting the trucks off the street, there less exposure to vehicle accidents. This has been reflected by the fact that the District is able to reduce their cost of insurance because of their exemplary record.

The recommendation that the District create work tasks and combine routes would have to be renegotiated with the Employees Union at the expiration of the present contract. The implications of changing the work routine might very well create scenarios for overtime pay which would be disastrous for the District.

Auditor’s Follow-up Response

We adhere to our findings.

Audit Finding (11)

Inappropriate Expenditures for food and Catered Meetings

The majority of monies spent as noted in the Audit Report was for a joint meeting held in the District's garage. The District invites its employees, their families, suppliers, vendors, local trade people, its insurance representatives, etc.

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Further, the District has provided a coffee maker in an area for the Supervisory personnel to have a cup of coffee and provides the coffee, cake and condiments in as much as they do not leave the building for lunch as required by the job.

The Board will reflect on the cost of the joint meeting to evaluate the cost as it relates to the goodwill it creates.

Auditor’s Follow-up Response

We concur with the District’s plan to reconsider the necessity of expenditures on food and beverages. We reiterate our recommendation that if these expenditures are allowed to continue, they be governed by written policy.