

*A REPORT BY THE NEW YORK STATE
OFFICE OF THE STATE COMPTROLLER*

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COMPTROLLER**



**DEPARTMENT OF LABOR
ENFORCEMENT OF THE PREVAILING WAGE
ON PUBLIC CONSTRUCTION CONTRACTS**

2001-S-68

DIVISION OF STATE SERVICES

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Report 2001-S-68

Ms. Linda Angello
Commissioner
Department of Labor
Building 12, State Campus
Albany, NY 12240

Dear Ms. Angelo:

The following is our audit report addressing the Department of Labor's enforcement of the prevailing wage on public construction contracts.

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law. Major contributors to this report are listed in Appendix A.

Office of the State Comptroller
Division of State Services

February 20, 2003

EXECUTIVE SUMMARY

DEPARTMENT OF LABOR

ENFORCEMENT OF THE PREVAILING WAGE ON PUBLIC CONSTRUCTION CONTRACTS

SCOPE OF AUDIT

Contractors on public construction projects are required by State law to provide their employees with wages and fringe benefits commensurate with those received by similarly employed workers in the locality of the project. This requirement is enforced by the New York State Department of Labor's Bureau of Public Work (Bureau), which establishes prevailing wage rates and investigates complaints. If an investigation indicates that prevailing wage requirements have been violated, the Bureau may withhold or recover some of the payments made to the contractor and make restitution payments to the contractor's employees. During the 2001 calendar year, Bureau records show it collected \$7.1 million from contractors, made restitution payments to 3,197 employees, and received 514 complaints about possible prevailing wage violations.

State law provides that complaint investigations be settled or closed within six months of the date the complaint was received by the Bureau, and any restitution payments unclaimed by employees for more than one year should be remitted to the Office of the State Comptroller (OSC) as abandoned property. Our audit addressed the following questions about the Bureau's complaint investigation process for the period January 1, 2000 through August 16, 2002:

- Was the process effective, and were investigations completed within six months, as provided in the law?
- Were unclaimed restitution payments remitted to OSC within the timeframe required by law?

AUDIT OBSERVATIONS AND CONCLUSIONS

We found that Bureau investigations generally are not completed within the six months provided in the law, and often take more than two years to complete. We also identified delays in the transfer of unclaimed restitution payments to OSC.

We found that most Bureau investigations are not completed within six months. For example, at the time of our review, 1,852 (86 percent) of the Bureau's 2,150 open investigations had been open more than six months. Moreover, when we evaluated the timeliness of the investigation process at two of the Bureau's nine district offices, we found that the process often took more than two years to complete. For example, the 30 open cases we randomly selected for review at the two offices had been open for an average of 35 months, and the 30 closed or settled cases took an average of 24 months to be closed or settled. Moreover, none of these 30 cases were closed or settled within six months. We therefore conclude that comprehensive changes are needed in the Bureau's complaint investigation process. When investigations are subject to such long delays, the information needed to assess the validity of the complaint is more difficult to obtain, the contractor is more likely to have gone out of business, and the employees due restitution payments may no longer be able to be located. As a result, the employees are less likely to receive their payments. (See pp. 5-8)

In our review of the investigation process, we determined that investigations are often slow to be initiated, as 37 (62 percent) of the 60 complaints in our sample were not even assigned to a Bureau investigator for at least six months. We also determined that investigations may sometimes continue for an extended period after they are assigned to an investigator. Bureau officials attribute delays in assigning complaints to a shortage of investigators, and state that the investigations themselves are delayed when contractors are uncooperative and investigators are unable to obtain information from other government units. We recommend that the Bureau develop an action plan for reducing the large backlog of open investigations, develop caseload standards for investigators and expected timeframes for investigations, analyze staffing needs and monitor the progress of investigations in terms of these standards and timeframes, and attempt to better coordinate with other government units. (See pp. 8-11)

We also found that improvements are needed in the Bureau's controls over the funds held for restitution payments. We determined that unclaimed payments are not always remitted to OSC after one year, as required by law, and the duties relating to the funds are not adequately separated among different employees. As a result, funds could be misappropriated without detection. We note that many of the problems identified by our audit were also identified by an internal review conducted by the Department of Labor in 1998, but Bureau officials told us they were not even aware of this review. We recommend that the Bureau's internal control system be significantly strengthened. (See pp. 12-14)

COMMENTS OF DEPARTMENT OFFICIALS

Department officials pointed out that there were no simple solutions to dealing with employers who violate prevailing wage laws. They added that, although every effort is made to complete an investigation in a timely manner, it is the volume and complexity of the investigations, as well as the lack of cooperation

from employers that precludes their ability to meet the six-month time frame set forth in Section 220 of the State Labor Law. The Department further stated that the six-month time frame has been clarified by various court decisions to be "directory," not mandatory. We clarified our report to reflect this. Regarding this matter, however, we note that the courts have indicated that this essentially means that the six-month period is to be viewed as having been imposed more for the purpose of securing uniformity and speed in the conduct of the investigations, rather than establishing the rights of the persons dependent on the completion of the investigation within that time frame.

Nevertheless, Department officials indicated that they have either already implemented or are in the process of implementing many of the report's recommendations. Such steps include: revising of the Bureau of Public Works' procedural manual; developing and installing a new case management system; and revising procedures for monitoring the status of complaint cases. The Department agreed that obtaining access to various State databases would help facilitate its investigations. Concerning restitutions, the Department indicated that it has already taken steps to improve the process used to make payments to claimants, separate duties, and improve controls to ensure compliance with the State's Abandoned Property Law. The Department further advised us that its new computer system would incorporate controls to improve monitoring outstanding restitution checks.

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INTRODUCTION

Background

Article 8, Section 220 of the New York State Labor Law requires that contractors on public work construction projects provide their employees with wages and fringe benefits commensurate with the prevailing rate and practices applicable to similarly employed workers in the locality of the project. To be considered a public work project, a project's primary objective must be to benefit the public. A public entity also must be a party to a contract involving the employment of laborers, workers, or mechanics. Based on collective bargaining agreements, the New York State Department of Labor's (Department) Bureau of Public Work (Bureau) sets prevailing wage rates. The Bureau also enforces the prevailing wage rates applicable to public work projects in the State.

To enforce prevailing wage rates, the Bureau performs proactive investigations and responds to complaints. All complaints must be written, and the Bureau makes determinations as to each complaint's validity. When an investigation yields sufficient evidence that employees on a project are not receiving the prevailing wage rate or fringe supplements, the Bureau has the authority to stipulate that a portion of the payments to the contractor be withheld or recovered. When an employer has been ordered to produce its payroll records and does not comply, the Bureau has the authority to withhold up to 25 percent of the total contract value, but no more than \$100,000. These funds, which are held by the Bureau, can be used to make restitution payments, with interest, to the contractor's employees. If the contractor does not agree with the restitution payments proposed by the Bureau, a formal hearing may be held to determine the extent of noncompliance with prevailing wage requirements.

During the 2001 calendar year, according to Bureau records, a total of \$7.1 million was collected from contractors, and restitution payments were made to 3,197 employees. During that same year, Bureau reports showed that 514 complaints were received, and 502 complaint investigations were settled or closed. In addition, contractors that violate prevailing wage requirements may be fined and/or barred from participating in

future public work projects. Bureau records show it collected a total of \$440,861 in such fines during the 2001 calendar year.

The State Labor Law provides that each prevailing wage complaint investigation be settled or closed within six months of the date the complaint was received by the Bureau. According to the State Abandoned Property Law, any restitution payments unclaimed by employees for more than one year should be remitted to the Office of the State Comptroller to be maintained as abandoned property.

The Bureau has a central office in Albany and district offices in Albany, Binghamton, Buffalo, Hempstead, New York City, Rochester, Syracuse, Utica and White Plains. While the Bureau has an office in New York City, the New York City Comptroller's Office is responsible for monitoring and enforcing prevailing wage compliance for all public works contracts let by the City of New York. In addition, the Bureau has a specialized unit, called Strike Force, which investigates wage rate compliance on a proactive basis across the State. The Bureau has a total of about 80 investigators and support staff.

Audit Scope, Objectives and Methodology

We audited the Bureau's procedures for processing prevailing wage complaints for the period January 1, 2000 through August 16, 2002. The objectives of our performance audit were to determine whether the Bureau (1) has an effective system for resolving complaint investigations and was able to resolve the investigations within six months, as provided in the law, and (2) remitted unclaimed restitution payments to the Office of the State Comptroller within the timeframe required by law.

To accomplish our objectives, we interviewed Department and Bureau officials. We also reviewed the State Labor Law, the State Abandoned Property Law, and the Bureau's complaint investigation policies and procedures. In addition, we reviewed and analyzed the Bureau's management reports, and reviewed the Department's Inspector General's internal audit report of the Bureau, dated April 9, 1998. We visited the Hempstead and Syracuse District Offices and reviewed a sample of 30 complaint investigation cases at each of the two offices.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations which are included within our audit scope. Further, these standards require that we understand the Department's internal control structure and its compliance with those laws, rules and regulations relevant to the operations included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by agency management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach when selecting activities to be audited. This approach focuses our audit efforts on those operations that have been identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, finite audit resources are used to identify where and how improvements can be made. Thus, little audit effort is devoted to reviewing operations that may be relatively efficient or effective. As a result, our audit reports are prepared on an "exception basis." This report, therefore, highlights those areas needing improvement and does not address in detail activities that may be functioning properly.

Response of Department Officials

A draft copy of this report was provided to Department officials for their review and comment. Their comments have been considered in preparing this report, and are included as Appendix B.

Department officials pointed out that there were no simple solutions to dealing with employers who violate prevailing wage laws. They added that, although every effort is made to complete an investigation in a timely manner, it is the volume and complexity of the investigations, as well as the lack of cooperation from employers that precludes their ability to meet the six-month time frame set forth in Section 220 of the State Labor Law. The Department further stated that the six-month time frame has been clarified by various court decisions to be

“directory,” not mandatory. We clarified our report to reflect this. Regarding this matter, however, we note that the courts have indicated that this essentially means that the six-month period is to be viewed as having been imposed more for the purpose of securing uniformity and speed in the conduct of the investigations, rather than establishing the rights of the persons dependent on the completion of the investigation within that time frame.

Nevertheless, Department officials indicated that they have either already implemented or are in the process of implementing many of the report’s recommendations. Such steps include: revising of the Bureau of Public Works’ procedural manual; developing and installing a new case management system; and revising procedures for monitoring the status of complaint cases. The Department agreed that obtaining access to various State databases would help facilitate its investigations. Concerning restitutions, the Department indicated that it has already taken steps to improve the process used to make payments to claimants, separate duties, and improve controls to ensure compliance with the State’s Abandoned Property Law. The Department further advised us that its new computer system would incorporate controls to improve monitoring outstanding restitution checks.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Labor shall report to the Governor, the State Comptroller and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

COMPLAINT INVESTIGATIONS

We found that most Bureau investigations are not resolved within six months, as provided in the law. In fact, many investigations take more than a year to resolve, and some take several years. In many instances, complaints are not even assigned to an investigator within six months. When investigations are delayed to such an extent, employees are less likely to receive their restitution payments, as the contractors owing the payments may go out of business or the employees due the payments may no longer be able to be located.

We identified a number of weaknesses in the procedures used by the Bureau to monitor complaint investigations. We also determined that investigations might be expedited if Bureau investigators were able to gain access to certain information maintained by other Department units and other State agencies. We recommend that actions be taken to enable investigators to gain access to this information, and improvements be made in Bureau management practices, particularly its management reporting system.

Timeliness of the Investigation Process

Article 8, Section 220 of the State Labor Law provides that the investigation of a prevailing wage complaint be resolved within six months of the date the complaint was filed with the Bureau. A complaint investigation may be resolved in either of two ways. If it is determined that there was no violation of prevailing wage requirements, the investigation is formally closed by the Bureau. If it is determined that prevailing wage requirements were violated, the Bureau and the contractor must formally agree on the amount of restitution payments to be made to the contractor's employees. When this agreement is reached, the case is considered settled and the investigation can be closed. The State Labor Law provides that the date of the formal settlement agreement be within six months of the date the complaint was filed with the Bureau.

According to the Bureau's records, as of March 1, 2002, a total of 2,150 complaint investigations (cases) were open. The Bureau's management reporting system does not indicate how long cases have been open. To determine how many of these cases had been open for more than six months, we calculated the interval between each complaint's date of filing and March 1, 2002. As shown in the following table, as of that date, 1,852 (86 percent) of the 2,150 cases had been open more than six months, and the investigation process was delayed to a similar extent in all nine district offices and in the special statewide Strike Force unit.

District or Unit	Total Open Cases	Cases Open More Than Six Months	Percent Open More Than Six Months
Albany	377	313	83.0
Binghamton	104	96	92.3
Buffalo	242	169	69.8
Hempstead	358	323	90.2
New York City	175	155	88.6
Rochester	210	195	92.9
Syracuse	190	164	86.3
Utica	119	103	86.6
White Plains	299	266	89.0
Strike Force	76	68	89.5
Total	2,150	1,852	86.1

Moreover, as is shown in Exhibit A, as of March 1, 2002, 1,020 (47 percent) of the 2,150 cases had been open since January 1, 2000 (more than two years) and 309 (14 percent) of the 2,150 cases had been open since January 1, 1997 (more than five years). We therefore conclude that the Bureau generally did not meet the provision of the Labor Law that complaint investigations be resolved within six months.

To further evaluate the timeliness of the Bureau's complaint resolution process, we visited the Hempstead and Syracuse District Offices. We chose these two offices to visit because (1) the Hempstead Office is located downstate, while the Syracuse Office is located upstate; (2) the Hempstead Office has a relatively large caseload, while the Syracuse Office has a medium-size caseload; and (3) both offices appeared to have an unusually large number of cases assigned to their Senior Investigator.

At each office, we reviewed a total of 30 cases. We reviewed cases that had been closed or settled as well as cases that were still open, to determine whether closed or settled cases had been processed in a more timely manner than the cases that were open at the time of our review. The 60 cases in our combined sample were selected as follows:

- At each office, we randomly selected 15 open cases. These cases were selected from the Bureau's Open Cases Report, dated March 1, 2002.
- At each office, we selected 15 cases that were no longer open. We were unable to select these cases randomly from a report summarizing the cases that were closed or settled during our audit period, as we would have preferred to do, because the Bureau's management reporting system was unable to produce such a report. Instead, we used various Open Cases Reports to identify cases that closed or settled between January 2, 2002 and May 16, 2002. We then divided these cases into two groups: cases that closed without restitution payments and cases that were settled with restitution payments. At each office, we randomly selected five of the cases that were closed without restitution payments, and ten of the cases that were settled with restitution payments (at the Syracuse Office, four of these ten cases were randomly selected from filing cabinets, because only six cases were settled with restitution payments at that office between January 2 and May 16, 2002).

We found that the closed/settled cases in our sample were delayed almost as long as the open cases. For example, while the 30 open cases in our sample had been open for an average of 35 months, the 30 closed or settled cases took an average of 24 months to be closed or settled (for the cases that were settled involving restitution, we calculated the interval between the date on which the complaint was filed with the Bureau and the date of the formal settlement agreement. For the cases that were closed without restitution we calculated the interval between the date on which the complaint was filed with the Bureau, and the date the case was closed). None of the 30 closed or settled cases were closed or settled within six months, as provided by law.

When investigations are subject to such long delays, the information and documentation needed to assess the validity of the complaint is more difficult to obtain, and there is a greater chance the contractor will be out of business or bankrupt. As a result, the claimants are less likely to receive the wages and benefits they are due.

Reasons for Delays in the Investigation Process

We identified a number of reasons for the delays in the Bureau's investigations. In particular, investigations are slow to be initiated, as complaints often must wait months before they are even assigned to an investigator. In fact, for 37 (62 percent) of the 60 complaints in our sample, more than six months passed before the complaint was assigned to an investigator. On average, a total of 18 months passed before these 37 complaints were assigned for investigation.

For example, one of the complaints in our sample was received by the Hempstead Office on December 24, 1997, but was not assigned to an investigator until June 7, 2001, nearly 3.5 years later. Another complaint was received by the Hempstead Office on February 19, 1999, but was not assigned to an investigator until October 31, 2001, about 2.7 years later. One of the complaints was received by the Syracuse Office on June 30, 2000, but was not assigned until February 4, 2002, about 1.6 years later. Another complaint was received by the Syracuse Office on October 20, 1999, but was not assigned until April 9, 2001, about 1.4 years later.

When cases are not assigned in a timely manner, it is more difficult to obtain information and locate people relevant to the investigation. We note that the Bureau has not established a timeframe within which it is expected that complaints will be assigned to an investigator. We recommend that such a timeframe be established, and complaints awaiting assignment be monitored against this timeframe.

We also note that, for the Bureau's management reporting system, the district offices have been directed to use a "pending assignment" code for cases not yet assigned to an investigator. However, we found that neither the Hempstead Office nor the Syracuse Office follows this directive. Instead, both offices assign all new complaints to their Senior Investigator. In some instances, the Senior Investigator will initiate the investigation

and request the payroll from the contractor being investigated prior to assigning the case to another investigator. In other instances, the Senior Investigator will not do any initial work and the investigation will not begin until the case is assigned to another investigator. As a result of this process, the management reporting system cannot be used to identify the cases in these two districts that are truly awaiting assignment.

District office officials attribute the delays in assigning cases to a shortage of investigators. During 2001 and 2002, the Bureau added 10 new investigator positions and filled an additional 10 positions that had been vacant. We asked Bureau officials to show us the justification they used in requesting additional positions from the Division of the Budget. However, the officials did not provide us with this justification. We also determined that the Bureau has not established a standard for the number of cases that can reasonably be assigned to an investigator or the number of investigators that are needed by a district office. Therefore, we were not able to evaluate the adequacy of the district offices' staffing levels. To effectively manage the caseload, the Bureau should establish a reasonable caseload standard for its investigators.

We also determined that investigations are sometimes significantly delayed after they are assigned to an investigator. For example, one of the complaints in our sample was received by the Syracuse Office on February 27, 1997. The complaint was assigned to an investigator on July 18, 1997 (almost five months later), and as of March 1, 2002, nearly five years after the complaint had been assigned to an investigator, the case had yet to be settled or closed. Nine cases we reviewed in the Hempstead Office took more than one year to resolve.

District office management told us that investigations are delayed after complaints are assigned to investigators because of a lack of cooperation by many contractors and some complainants. According to the officials, most of the delays are caused by contractors. The officials also stated that investigations are delayed because investigators do not have access to needed information maintained by other Department units (such as unemployment insurance data) or other State agencies (such as certain tax information). The investigators do not have access to this information because they are not legally authorized to receive the information. Bureau officials told us they are attempting to enable their investigators to gain access

to this information, but they provided no documentation of their efforts. We recommend that these efforts be intensified.

We noted that the manual containing the procedures relating to complaint investigation is outdated. Neither the Hempstead nor the Syracuse District Office uses this manual, in part, because it is outdated. Officials at the Syracuse District Office were not even sure if they still had a copy of the manual. In the absence of a reliable procedures manual, the appropriate procedures are less likely to be followed and the organization's objectives are less likely to be accomplished. A reliable procedures manual is especially important for organizations with decentralized organizational structures, such as the Bureau.

Bureau officials told us that they have been working with the Department's Policy and Planning Bureau to re-write the manual, and they expect to complete a draft version of the revised manual in November 2002.

We also determined that the investigation process could be monitored more effectively by Bureau managers. Improvements are especially needed in the Bureau's management reporting system. The reports produced by the system are not used by district office officials to manage investigations, and are often incomplete and inaccurate. For example, some of the Bureauwide reports did not include information for the New York City District Office or the statewide Strike Force unit. In addition, when we traced report information back to source documents, we identified several errors, especially in the identification of the investigator assigned to the case.

We also note that detailed information about investigations is maintained locally by the districts on disks until investigative work reaches, or nears, completion. At this point, the data is transmitted to the Central Office database. Since detailed information is not made available to the Central Office until the investigation is nearly complete, Central Office management is less able to monitor the progress of investigations. In addition, officials at the Hempstead and Syracuse District Offices told us that data is sometimes lost in the transmission process and must be recreated by investigators, resulting in further delays.

We recommend that the Bureau make significant improvements in its management reporting system for prevailing wage complaint investigations. The information on the system must

be accurate, complete, up-to-date and sufficiently detailed to be of use in monitoring the progress of complaint investigations. We further recommend that the Bureau use strategic planning to:

- develop specific goals and targets for reducing delays in the complaint investigation process,
- analyze caseloads and staffing needs to develop reasonable benchmarks for investigator productivity, and
- identify areas where processes need to be re-engineered or legislative requirements changed.

Recommendations

1. Develop an action plan for reducing the backlog of open complaint investigations.
2. Improve the management reporting system for complaint investigations so that the information on the system is accurate, complete, up-to-date and sufficiently detailed to be of use in monitoring the progress of complaint investigations. Take corrective action when the system is not updated accurately, promptly or correctly.
3. Analyze caseloads and staffing needs to develop reasonable benchmarks for investigator productivity.
4. Use the productivity benchmarks to develop specific goals for reducing delays in the complaint investigation process. Use the management reporting system to monitor the performance of the district offices in meeting these goals, and take corrective action when the goals are not met.
5. Identify areas of the investigation process that need to be re-engineered, and identify legislative requirements that need to be changed to facilitate the investigation process.
6. Coordinate with other Department units and other government agencies to obtain access to information that is needed for complaint investigations.

CONTROLS OVER RESTITUTION PAYMENTS

A portion of the payments to a contractor may be withheld or recovered if it appears that the contractor has violated prevailing wage requirements. These funds may then be used to make restitution payments to the contractor's employees. According to Bureau records, as of May 15, 2002, a total of \$3.3 million in such funds was held by the Bureau. We examined the Bureau's controls over these funds. We found that certain controls need to be strengthened if the funds are to be adequately protected against loss. We also found that unclaimed restitution payments are not always remitted to the Office of the State Comptroller after one year, as required by law.

Separation of Duties

In a system of strong internal control, related duties are separated so that a single individual cannot misappropriate funds and alter records to conceal the misappropriation. However, we found that a single employee in the Bureau's Central Office is responsible for verifying the amount of restitution owed to each claimant, verifying the address of the claimants, authorizing payments to the claimants, and maintaining the records that summarize the payments for Bureau management. As a result, this employee could falsify claimant names and addresses, and authorize payments to these false names and addresses. While changes in claimant names and addresses are summarized on a report, this same employee is the only one who routinely reviews this report. Since claimants often are not aware of the Bureau's investigations until they receive a restitution payment, any payments diverted in this manner may not be detected.

To determine whether funds held for restitution payments had been inappropriately diverted, we examined the records used by the Bureau in accounting for the funds. Since many of these records are not yet automated (an automated system is under development), the extent of our audit testing was limited. While our limited tests did not identify any apparent diversions of funds held for restitution payments, to provide better protection for the

funds to be used for restitution payments, we recommend that the duties relating to the funds be separated among different employees.

Unclaimed Restitution Payments

According to Article 13, Section 1308 of the New York State Abandoned Property Law, any restitution payments made to employees, but unclaimed by the employees for a period of one year, shall be considered abandoned property, and as such must be transferred to the Office of the State Comptroller (OSC) by May 1 of each year. OSC's Office of Unclaimed Funds is responsible for maintaining such funds, and seeks to find the owners of the funds to the extent feasible.

To determine whether unclaimed restitution payments were transferred to OSC in a timely manner, we randomly selected 25 of the unclaimed restitution payments that were transferred in the year 2001 and 25 of the unclaimed restitution payments that were transferred in 2002, and determined how long the payments had been unclaimed when they were transferred. We found that 7 of the 25 payments transferred in 2001 (totaling \$866) and 9 of the 25 payments transferred in 2002 (totaling \$5,146) were not transferred in a timely manner and should have been transferred during a prior year. For example, an unclaimed restitution payment of \$4,263, which should have been transferred to OSC in May 2000, was not remitted until May 2002.

We also reviewed the unclaimed restitution payments held by the Bureau on May 16, 2002. We identified 86 payments, totaling \$75,633, that should have been included in the 2002 remittance to OSC. We conclude that improvements are needed in the process used by the Bureau to identify unclaimed payments for transfer to OSC. Central Office officials told us they consider the district offices to be responsible for identifying such payments, while district officials at both the Hempstead and Syracuse Offices told us they consider the Central Office to be responsible for identifying such payments. We recommend that this responsibility be clarified.

Restitution Checks Outstanding for More Than Six Months

Restitution payments are made by checks that are mailed to the employees. If the checks are not cashed, the payments are not claimed. According to Department policy, all checks that are outstanding for more than six months should be voided. However, when we analyzed the Bureau's list of outstanding checks as of April 1, 2002, we identified 32 restitution checks, totaling \$22,576, that had been outstanding for more than six months. We determined that 19 of these checks, totaling \$6,478, had been outstanding for at least 809 days (about 26 months), and therefore should have been transferred to OSC as abandoned property. Because the funds were not transferred, they were less likely to be claimed by the individuals who were owed the restitution payments.

Recommendations

7. Separate among different employees the duties related to the funds held for restitution payments.
8. Clarify who is responsible for identifying unclaimed restitution payments for transfer to OSC, and monitor the unclaimed payments to determine whether they are transferred in accordance with the Abandoned Property Law.
9. Monitor the outstanding restitution checks and void all checks that have been outstanding for more than six months.

**AGING OF OPEN COMPLAINT INVESTIGATIONS BY DISTRICT OFFICE
AS OF MARCH 1, 2002**

District or Unit	Total Open Cases	Cases Open Since Sept. 1, 2001	Cases Open Since Jan. 1, 2000	Cases Open Since Jan. 1, 1997
Albany	377	313	151	12
Binghamton	104	96	73	36
Buffalo	242	169	45	4
Hempstead	358	323	240	96
New York City	175	155	116	9
Rochester	210	195	97	36
Syracuse	190	164	66	19
Utica	119	103	49	16
White Plains	299	266	153	72
Strike Force	76	68	30	9
Total	2,150	1,852	1,020	309

MAJOR CONTRIBUTORS TO THIS REPORT

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January 3, 2003

Mr. William P. Challice
Office of the State Comptroller
Division of Management Audit & State Financial Services
123 Williams Street – 21st Floor
New York, New York 10038

Mr. William Challice:

The Department of Labor (Department) has received and reviewed your draft audit report (2001-S-68) on the Department's enforcement of the prevailing wage on public construction contracts.

The Department's Bureau of Public Work (Bureau) is one of the largest State-sponsored prevailing wage enforcement units in the nation. Annually, there are over 9,000 new public work contracts let by public entities and an estimated 20,000 plus active construction projects, with an undetermined number of prime and subcontractors on each one that the Bureau has responsibility for. The numbers are staggering. In many cases, the investigations today involve falsified payrolls, forged documents, day laborers and illegal aliens. Employers, no matter how guilty, retain aggressive attorneys who, in many cases, delay the process using all legal avenues.

The Bureau concurs with some of the thoughts and findings contained in this draft report while cautioning that there are no simple solutions to dealing with the non-compliance of the violating employers. The vast majority of contractors attempt to comply with the statute and the Department has worked hard at establishing a good relationship with these employers through outreach and education. The Department has made a strong commitment to investigator training and improving and replacing the case management systems. Our experience has shown that only a comprehensive approach utilizing education, enforcement and partnering with the various participants in public construction will yield the results needed to protect New York State workers.

Having stated the above, the remainder of this letter will address some of the more significant recommendations contained in this draft report.

The audit report recommends that the Bureau develop an action plan to reduce the current backlog of open cases to ensure future investigations will be completed within six months as required by the Labor Law. This six-month time frame has been clarified by various court decisions to be *directory*, not mandatory. Although every effort is made by the Bureau to conduct an investigation effectively and efficiently, it is the volume and complexity of the investigation, as well as the lack of cooperation often provided from employers, that expands the timeframe of a case.

It is noted in the audit findings that the Bureau's procedures manual containing policies and procedures on employee's conduct and work process is outdated. As the auditors were made aware prior to this audit, the Bureau has been working with the Department's Policy and Planning Division to re-write the manual. The final draft version is anticipated to ready for review by year-end 2002.

Regarding the recommendation to improve our management reporting system, as auditors are aware, the Bureau of Public Work along with the two other Worker Protection Divisions is undergoing a re-engineering of our work process and computer systems. Included in this process will be the development and installation of case management system based on a software program called CURAM. Once installed, the Bureau will easily be able to develop and maintain detailed reports on each of our functions. In light of this new software program, the Central Office is currently re-evaluating the management reports to assess the value of each report and possibly generate additional reports that will be useful in managing the caseload as well as database information.

The nature of the investigation business, i.e., complex investigations involving employer and employee cooperation, availability and access of documents and legal maneuvering by contractors' attorneys, makes it difficult to establish an accurate, useful performance measurement system. There are so many variables in each individual investigation that a "typical" timeframe does not exist. The Bureau generates numerous reports that are distributed to the District Offices that are used as progress indicators. Some of these include: open-case list, abandoned property list, funds on hold report, outstanding checklist, contract withholding list, wages collected, etc. As a result of this review, management has put greater emphasis on following through with tracking implementation of progress to effectively accomplish the Bureau's objectives. The draft report states that cases are sometimes slow to be initiated after the filing of a complaint. Cases are assigned to individual investigators and initiated as quickly as possible taking into account each individual's workload at the time of receipt of the new complaint. Management will assure that staff utilize a "pending assignment" code for unassigned cases. As to the management monitoring the case-tracking computer systems, supervisory staff have been advised of the importance of our case-tracking system when a case is transferred to another investigator, Counsel's office, another District Office, etc. As a result of this review, an open-case listing with such codes is distributed to each District Office bi-weekly. The Senior Investigator reviews the list for accuracy and makes any changes necessary. When a change in assignment is needed, the Senior

Investigator submits those codes to the Albany Central Office where the change is made in the system.

Another recommendation contained in the audit report is for the Bureau to gain access to other useful State databases to improve case processing timeliness. The Department supports this recommendation where possible and continues to solicit access to other State agencies' databases to facilitate our investigations. Some information discussed with the audit staff, such as tax-based data, is and will continue to be unavailable due to federal and state legislation.

Concerning Employee Restitutions, the audit report indicates that the Bureau's handling of contractor restitution payments, subsequent restitution payments to claimants, the *current separation of duties pertaining to monetary processes and compliance with the State's Abandoned Property Law*, are all areas with opportunities for improvement. The Bureau agrees with the report's recommendation to remit abandoned property to the Office of the State Comptroller in accordance with the State's Abandoned Property Law. However, occasionally, there is a lack of timeliness in transferring checks to Abandoned Property. The reason for this is to allow the involved districts/investigators to search for a current address, name or other information to complete payment of employees' back wages. As a result of this review, the Bureau is taking steps to clear up the internal process by providing the funds-on-hold reports to the districts. Currently, the Central Office is responsible to transfer unclaimed payments to the Office of the State Comptroller *once a year on or before the first day of May*. The District Offices are responsible to notify the Central Office which unclaimed payments should be transferred. The District Offices are responsible to check the "Funds on Hold" report, which are distributed weekly from the Central Office and make all reasonable attempts to locate the claimant. If all attempts fail to locate the claimant, the District Office notifies the Central Office to transfer those funds to Abandoned Property (OSC). Also, with the implementation of the aforementioned CURAM system, we can implement an automatic flagging for restitutions held by the Bureau but eligible for treatment as abandoned property.

As to the *recommendation to monitor outstanding checks to void restitution checks in accordance with Department policy*, management has instituted a policy to periodically review the outstanding check list and recently closed cases to insure all employees' checks have been cashed and returned to the Department. Likewise, the implementation of the CURAM system will automatically flag outstanding checks after a certain time frame.

Finally, the audit report's recommendation for the separation of duties so that efficient controls are implemented over the monetary process has been addressed by the Bureau. A procedure is now in place whereby a supervisor's signature must accompany the changing of vital information when received in the Central Office prior to being submitted to keyboard personnel.

The Department remains committed to ensuring that laws governing prevailing wage on public construction contracts are understood and adhered to. To this avail, the Department will continue communication to employers through outreach and education and will continue to improve information available to staff conduct thorough investigations where necessary.

If you have any questions or would like any additional information, please contact me at (518) 457-9016.

Sincerely,



Karen C. Stackrow
Director of Internal Audit

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