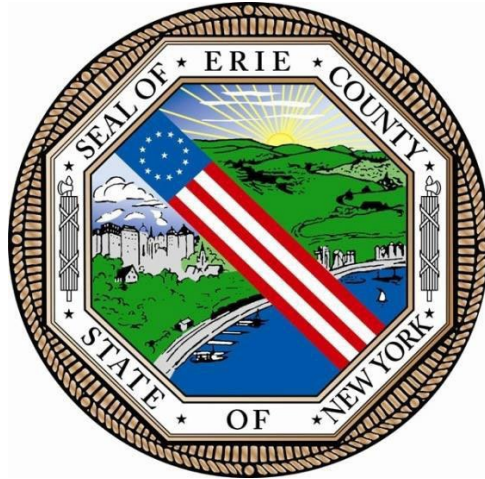


July 2024

**Erie County Comptroller's Office
Audit of the Bureau of Weights and Measures
Overtime and Compensatory Time Procedures
January 1, 2023, through December 31, 2023**



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ERIE COUNTY COMPTROLLER**

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July 23, 2024

Erie County Legislature
92 Franklin Street, 4th Floor
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Dear Honorable Members:

The Erie County Comptroller's Office has completed an audit of the Bureau of Weights and Measures' overtime and compensatory time procedures during the period January 1, 2023, through December 31, 2023.

The Auditor's objectives were to determine (1) whether employees were eligible for overtime hours entered, whether those hours were approved in advance, accurately calculated, properly recorded, and adequately monitored; and (2) whether practices regarding overtime and compensatory time complied with Erie County policies and the Civil Service Employees Association, Inc. (CSEA) Collective Bargaining Agreement (CBA). The Auditor believes that the evidence obtained provides a reasonable basis for the findings and conclusions described herein based on audit objectives.

The Division of Audit's responsibility is to express an opinion based on the facts obtained during the course of the audit. The Auditor conducted this audit in accordance with the Generally Accepted Government Auditing Standards (GAGAS). Those standards require the Auditor to plan and perform the audit in a manner that is designed to obtain sufficient, appropriate evidence that will provide a reasonable basis for the results of the audit and present conclusions based on stated audit objectives. The Division of Audit believes that based on those objectives, the evidence obtained provides a reasonable basis for the results, findings, comments, and recommendations contained herein.

AUDITOR'S OPINION

In the Auditor's opinion, the internal controls over granting, approving, and monitoring overtime and compensatory time within the Bureau of Weights and Measures are adequately designed and operate effectively when controls are consistently enforced. While the Auditor found a small number of recording and compensation errors, measures were identified that can be taken to reduce those risks. These errors were likely the result of misinterpretation of the Collective Bargaining Agreement which allowed certain employees premium pay benefits they were not entitled to. The greatest cause for concern identified by the Auditor was compliance with certain County policies and the CBA with CSEA and the limitations with the County's Accounting System. The Auditor found no evidence that the issues resulted from deliberate misconduct as alleged by several whistleblower complaints.

In addition, the Auditor determined that certain issues were outside the control of the Bureau of Weights and Measures and fell under the responsibility of the Department of Personnel. It is the responsibility of the Department of Personnel to understand and interpret the CBA requirements and to implement those requirements as written.

Background

On February 7th, 2024, the Erie County Comptroller's Office Division of Audit issued an engagement letter to the Erie County Department of Public Advocacy regarding our intent to audit the overtime and compensatory time procedures, otherwise known as "comp time", within the Erie County Bureau of Weights and Measures.

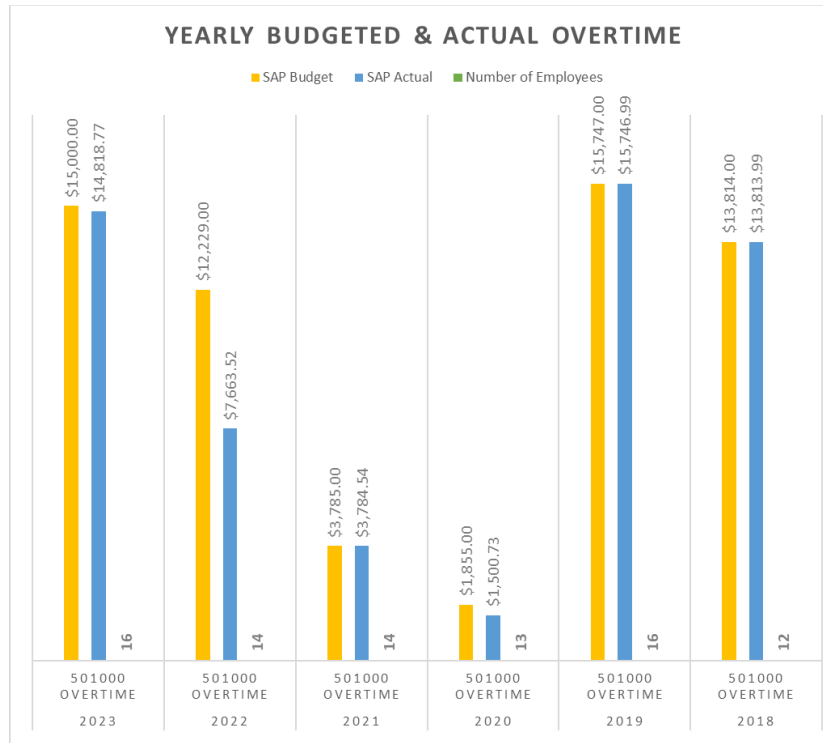
In 2023, the Office of Comptroller's whistleblower hotline received complaints alleging that employees in the Erie County Bureau of Weights and Measures were abusing the system of paid leave. In sum, the complaints accuse certain employees of abusing sick time and violating several Erie County policies relating to time and attendance. In addition, the Comptroller's Office received other allegations outside the whistleblower hotline alleging that employees in Weights and Measures improperly claimed overtime on Saturdays when they were ineligible to do so.

Weights & Measures

The Bureau of Weights and Measures is established by Article XVI of the New York Agriculture and Markets Law. Every county is required to have a "Director of Weights and Measures". The Director was formally known as the "County Sealer." The Director is responsible for administering the Bureau, calibrating standards, keeping records and facilitating inspections, along with weighing and measuring a wide variety of commodities essential to the daily lives of Erie County residents.

The Erie County Bureau of Weights and Measures is found within the Department of Public Advocacy. The Bureau consists of "Deputy County Sealers (Sealers) and Scanner Accuracy Examiners (Examiner)." According to the 2024 Budget Book, the Bureau expected to perform 4,500 inspections, conduct inspections on 10,500 devices, check 7,000 devices for skimmers and other irregularities, and investigate dozens of complaints. The Bureau is New York State's primary means of testing fuel. Scanners also conduct thousands of inspections per year, in which they report scanning between 250,000 and 350,000 individual units.

Employees in the Bureau of Weights and Measures often work on Saturdays when the weather permits, to conduct inspections during business hours of operation.



To evaluate the Auditee’s management of overtime expense the Auditor reviewed the yearly budgeted and actual overtime expense incurred by Weights and Measures over a period of five years while giving due consideration to the effects caused by the pandemic period to review whether overtime expenses stayed within the budgeted amounts.

In addition, the Auditor reconciled the Auditee’s overtime expense records to the County’s GL #501000 overtime expense and found a \$309.91 variance. This variance was mainly because the County’s GL #501000 included overtime hours paid at a straight time rate (1.0x) together with overtime paid at a one and a half rate (1.5x); however, the Auditee’s records did not include overtime paid out at a straight time rate. Regardless of the variance the department’s overtime expense did not exceed the approved budgeted amount and management has a procedure in place to track and monitor overtime for each payroll cycle breakdown by employee.

CBA Operative Rules

Employees of Weights and Measures are members of CSEA, the recognized bargaining representative for white collar Erie County employees under Article XIV of the Civil Service Law. As such, they are primarily governed by the contract negotiated between CSEA and the County. Articles XIII through XXI of that contract, ratified in 2023, contemplate various forms of time off and the rules accompanying each type of time.

The relevant categories of paid leave for the purposes of this audit are (1) holiday, (2) vacation, (3) overtime, (4) sick, (5) personal, and (6) compensatory. Pursuant to the language of the CBA, the Bureau of Weights and Measures is not considered a 24-hour operation which was verified by the department supervisor.

Holidays are specifically bargained for by the CSEA unit; in the current contract, there are 12 paid holidays for all full-time members. Whenever one of the bargained-for holidays falls on a weekend, the previous Friday or following Monday are taken in observation. Vacation pay is accumulated on a per pay period basis and varies depending on length of service. Vacation pay is interchangeable with “regular straight time pay” and is unaffected by holidays. Sick leave is accrued at a defined rate and is to be used for specific purposes relating to healthcare and emergent needs of employees and their family. Personal leave begins accruing after an employee’s first full year of service but does not exceed six days per year depending on the date of hire. The CBA defines “actual service” as “total time spent actually working in a position including any paid time off and/or leave with pay.” However, “actual service” does not necessarily equate to hours “actually worked”, the latter of which is not defined by the CBA.

Comp time does not have its own category in the CBA; however, a policy is included in the County’s Employee Handbook and refers back to the provisions outlined in the CBA. Comp time has been deployed in a manner, particularly in the most recently ratified CBA, to remunerate employees with additional time off rather than paying the traditional overtime premium mandated by the Fair Labor Standards Act. Employees are eligible for overtime when they “actually work” more than eight hours on a given day or 40 hours in a given week. Instead of receiving cash payment for overtime, employees will accumulate comp time at the overtime rate of time and one-half, up to 120 hours.

The critical clause for the purposes of this audit can be found in the CBA § 16.6, which provides that “[e]xcluded from computation of forty (40) hours per week to be worked for purposes of the overtime premium of time and one-half are all sick leave and personal days. All other paid leave time, including paid lunch hours and compensatory time shall be counted as time worked.”

Overtime Requirements

The CBA between the County of Erie and CSEA outlines several different wage types that qualify as overtime pay rates:

Overtime paid at 1.5 times regular hourly rate includes all time worked in excess of eight hours in any workday or 40 hours per week. Excluded from the computation of 40 hours for purposes of the overtime premium are all sick leave and personal leave days. All other paid leave time, including paid lunch hours and comp time counts as time worked.

Compensatory time earned at 1.5 times regular hourly rate enables each employee who desires compensatory time off in lieu of overtime to accumulate that time at the rate of time and one-half for each hour or part thereof worked in excess of 40 hours per week or 8 hours per day. The maximum number of overtime compensatory hours that may be accumulated by an employee at any one time is 120 hours.

Second Shift Differential relates to 24-hour operations. Normally, the second shift begins at 3:00 p.m. and terminates at 11:00 p.m. When an employee works for four hours or more into the second shift, he or she will be paid for all hours worked in the second shift. Employees that work non-traditional schedules differing from the second shift shall receive shift differential for all hours that fall into the second shift definition. \$1.75 per hour shift differential will be granted to all employees on the second shift.

Third Shift Differential relates to 24-hour operations. Normally, the third shift begins at 11:00 p.m. and ends at 7:00 a.m. Employees that work non-traditional schedules differing from the third shift shall receive shift differential for all hours that fall into the third shift definition. \$2.25 per hour shift differential will be granted to all employees on the third shift.

Time Entry

Time entry is done through a swipe card system. Employees manually enter or correct entries for overtime, and comp time into the County's Employee Self Service timekeeping system (ESS). Such entries require supervisor approval. In addition, employees must accurately record their attendance at work by swiping their employee identification badge at their designated employee swipe card reader(s) or swiping in digitally through ESS. Swipes must be recorded when reporting to work at the beginning of the workday, when leaving for and returning from meal periods if they are taken off the premises, and when leaving work at the end of the workday. Bureau of Weights and Measures employees who work offsite swipe in at the beginning and end of the workday and are not required to swipe out for meal periods.

The Bureau of Weights and Measures is responsible for entering, approving and posting time entries to the appropriate General Ledger (GL) account in the County's accounting system (SAP) and the Department of Personnel is responsible for configuring all the CBA rules for overtime, comp time, shift differential, etc. in the County's accounting system.

Testing

The Auditor utilized the County's accounting system to generate various overtime reports for the Bureau of Weights and Measures during the audit period. The Auditor looked at factors such as the number of employees who logged hours, their job titles, levels of seniority, hours of overtime worked, specific times when overtime was worked, categorical types of overtime worked, and total overtime dollars earned. We compared the reports obtained from the County's accounting system to overtime reports provided by the Auditee.

Scope

The scope of the audit included an examination of policies and procedures in place to grant, approve and monitor overtime payments and comp time within the Bureau of Weight and Measures for the period of January 1, 2023, through December 31, 2023.

Objective

The audit objectives included testing and evaluation of the process for the earning and approval of overtime and comp time in order to determine whether actual practices complied with County policies and the CBA. Comp time usage was also evaluated. The audit included an evaluation of the internal controls for timekeeping practices maintained by the Bureau of Weights and Measures.

Methodology

To satisfy the objectives within the audit scope, the Auditor obtained the Internal and System Control Questionnaires (ISCQ) from both the Bureau of Weights and Measures and the Department of Personnel to establish a baseline for testing. During fieldwork observations of the Bureau of Weights and Measures' overtime procedure, the Auditor found that overtime hours were approved at the beginning of the payroll cycle prior to meeting the required 40 hours per week.

After the walkthrough with the Bureau of Weights and Measures, the Auditor determined that it was necessary to meet with the Department of Personnel to gain an understanding of payroll's ability to verify employee eligibility for the overtime premium based on evaluating all wage types and hours worked in excess of standard contractual thresholds.

To determine the population for each test performed concerning the procedures for granting, approving and monitoring overtime and compensatory time, the Auditor performed the following tests:

1. Based on the CBA and Erie County Policy, the Auditor determined that employees are permitted to correct unauthorized leave unpaid entries ("ULU") and unauthorized overtime within the next two payroll periods after an error occurs. As a result, the Auditor determined that the entire population of 26 pay periods of time reporting activity in SAP would need to be tested for 16 Weights and Measures employees, some of whom were only employed for a portion of the audit period.

To complete this testing, the Auditor examined SAP records detailing each employee's hours recorded by wage type per day, week and pay period to verify that overtime, shift differential and compensatory time accruals complied with the CBA requirements. To make this determination, the Auditor referenced the County of Erie Accounting and Personnel Policies, the County of Erie Handbook and the Collective Bargaining Agreement between the County of Erie and CSEA.

2. The Auditor determined that the total population of overtime, shift differential and comp time entries during the audit period was 133. After removing any duplicate entries for the same employee within the same pay cycle, a population of 81 time-entries remained. Of the 81 non-duplicative entries, the Auditor selected a random sample size of 39 time-entries necessary to reach a 95% confidence level with a 5% rate of error. Eight time entries appeared to not comply with the policies in the CBA and were tested in addition to the 39 entries selected.

To complete this testing, the following specific actions were taken:

- The Auditor examined the daily hours recorded in the County's accounting system relating to Weights and Measures employees, broken down by wage type on a weekly and bi-weekly basis during the audit period. The latter was necessary to align with applicable pay periods;
- The Auditor verified the overtime, comp time, and shift differential entries created and approved in ESS by reconciling those numbers to those recorded in the County's accounting system;
- The Auditor examined the actual swipe times recorded in the County's accounting system and verified whether they reconciled to the times logged on the Daily Attendance Reports provided by Auditee;
- The Auditor examined the travel time, site time and total daily minutes logged on the Daily Minutes Report provided by the Auditee and verified the total daily minute count by reconciling the total to the hours recorded in the County's accounting system;

- The Auditor examined the start time, end time and total time logged on the Daily Attendance Records provided by the Auditee and verified the times to the actual swipe times recorded in the County's accounting system;
- The Auditor examined the Overtime Payment Method reports provided by the Auditee for payment selection of Cash (1001) and/or Comp (1002) and verified the payment method by reconciling the provided reports to the pay stub in the County's accounting system; and
- The Auditor examined pay stubs to perform an analysis of regular hours, sick hours, personal hours, premium overtime, straight overtime, premium comp, straight comp time, beginning comp time balance, comp time usage, and ending comp time balance. The Auditor verified those numbers by reconciling the data, hour category, and wage type recorded in the County's accounting system with the reports provided by Auditee.

AUDIT FINDINGS

Finding 1: Payroll System Lacked the Capabilities to Recalculate Comp Time Accruals After Late Time Entry was Entered.

During testing, the Auditor found that 3.97 hours of comp time was not accrued for one employee because that employee failed to swipe out on June 15, 2023. As a result, 7.95 hours worked by the employee showed as "Unauthorized Leave Unpaid" on the pay stub instead of regular hours. This lapse affected the employee's weekly time accrual calculation and caused the 7.95 hours of comp time to be paid at a straight time rate instead of the premium rate to which the employee was entitled. The Auditor examined the two subsequent payroll cycles following the missed swipe and found that 7.95 hours previously deemed "Unauthorized Leave Unpaid" was corrected to 7.95 regular hours work. However, those adjustments did not include the addition of 3.97 hours of comp time to which the employee was entitled.

CBA § 16.6 provides that "[a]ll employees who actually work over eight (8) hours in any workday, or forty (40) hours per week shall be paid time and one-half times such employee's straight time hourly rate, for all hours worked in excess of eight (8) hours in any workday or forty (40) hours per week. Excluded from computation of forty (40) hours per week to be worked for purposes of the overtime premium of time and one-half are all sick leave and personal leave days. All other paid leave time, including paid lunch hours and compensatory time shall be counted as time worked."

In a fieldwork conversation with the Department of Personnel, the Auditor was informed that there was no process in place during the audit period to evaluate the late time entries to ensure that pay rate and/or comp time accruals were recalculated based on the adjusted hours for that pay period.

Recommendation

Further discussion with the Department of Personnel indicated that they updated the time keeping process in November 2023 to capture late time entries for the previous 28 days and recalculate the premium time accrued. This process was not observed during the audit and no formal procedures were provided to the

Auditor. Therefore, the Auditor recommends that the payroll unit in the Department of Personnel document this process as a formal procedure to ensure consistency and accuracy when handling late time entries.

Finding 2: Employees Improperly Received Shift Differential Premiums.

During testing, the Auditor found that Weights and Measures employees received 28.75 hours of shift differential overtime premium during the audit period. Only certain Erie County Departments host operations which entitle employees to shift differential pay. The Bureau of Weights and Measures does not fall within the CBA definition, and the shift differential premium received during the audit period should not have been paid.

CBA Article 13 governs shift differential pay for CSEA employees. § 13.6(a) sets the shift differential rates, stipulating that the premium attaches to “every hour actually worked on such shifts.” § 13.6(b) defines the hours to which those rates apply. However, the latter provision conditions the applicability of the definition upon the status of the administrative subunit being a “24-hour operation”. The Bureau of Weights and Measures is not a 24-hour operation; the Erie County Department of Emergency Medical Services, for example, is. Thus, § 13.6(b) doesn’t apply to Weights and Measures. The second part of that provision describes “non-traditional schedules”, which is intended to encompass employees who are regularly scheduled at irregular hours, not employees whose standard department workday overlaps with the hours defined as second or third shift. Subsection (e) refers back to the shifts described in subsections (a) and (b), meaning that entitlement to the shift differential pay rate is inextricably linked to hours worked in the second or third shifts. Most departments only operate during traditional business hours; there is no second or third shifts, just a workday.

Most traditional administrative units, including Weights and Measures, have established regular schedules where regular work hours range from 7:00 a.m. to 5:00 p.m. Unlike most traditional units, some work that Weights and Measures employees perform must be completed once started, regardless of time. However, there is no indication that the CBA negotiators intended every department or office to be subject to shift differential provisions of the agreement. Shift differential and overtime are discussed in entirely separate sections of the CBA and there is no legal nexus between the two. If the parties intended for employees to receive shift differential in instances where overtime is worked, they could have so indicated in the overtime article. The language that was ratified demonstrates an intent to keep the two benefits separate.

Interpreting the CBA provisions to provide universal eligibility for shift differential nullifies the purpose of that benefit. The exclusive rationale of shift differential premiums is to incentivize employees to work non-traditional hours on a regular basis, which is imperative for maintaining 24-hour County services. In the case of employees whose regular hours deviate from the defined shifts, the CBA balances incentive with inconvenience and agreed on the four-hour threshold to meet that balance.

However, it would be unfair to employees who were mandated to stay in order to ensure continuity of coverage to be bound by the four-hour rule. That is the purpose of subsection (e). Standard workday employees who stay late are already incentivized by the time-and-one-half overtime premium. The rationale for shift differential is not present because the employee is not committing to work odd hours on a regular basis; the employee is doing so involuntarily. Furthermore, there is a difference between a standard workday employee earning warranted overtime on an ad hoc basis and a 24-hour department employee mandated to

stay past his or her shift. The standard in the situation of warranted overtime is justification, as indicated by equal distribution provisions in the overtime article, the right to refuse, and repeated use of the word “casual”. The standard for the mandated overtime, on the other hand, is legal or operational necessity – someone must perform the job at all times and the employee cannot abandon their post until relieved.

Recommendation

The Auditor recommends that the Department of Personnel update the HR Module rules within the County’s accounting system that qualify employees for shift differential. Currently the County’s accounting system cannot differentiate between 24-hour operations and departments working under a traditional schedule, or between voluntary and involuntary overtime hours worked. The updates should exclude departments not considered 24-hour operations or have been voluntarily scheduled to work overtime based on the language in the CBA.

Finding 3: Inaccurate Shift Differential was Paid.

Based on data recorded in the County’s accounting system, the Auditor found that an employee swiped in at 05:54 and swiped out at 20:02, for a total of 14.08 hours worked. The Auditor determined that under Weights and Measures’ interpretation of the CBA, the employee was eligible for four hours of second shift differential overtime pay for the hours worked between 16:00 and 20:00, and only one hour of third shift differential overtime pay for the hours worked from 06:00 to 07:00.

During testing, the Auditor found that the employee was inaccurately paid four hours of a third shift differential overtime rate instead of four hours at a second shift differential overtime rate and one hour at a third shift differential overtime rate according to the employee’s swipe times.

The Auditor examined the two subsequent payroll cycles immediately following the payroll error but found that no correction was made. In addition, during testing the Auditor found another employee also worked the same schedule and was paid correctly.

At the end of fieldwork conference, the Department of Personnel provided the Auditor with the employee’s comp time entries in the Employee Self-Service system demonstrating what caused the error. The payroll system operates using military time. The employee entered his comp time request for the overtime worked using civilian time, which resulted in an incorrect entry. Furthermore, the comp time hours requested overlapped, and should have resulted in four hours of comp time accrual instead of the six hours recorded in the County’s accounting system. The times reported on the comp time request (Illustration 1) did not match the actual swipe times of the employee (Illustration 2), causing an inaccurate payment of shift differential overtime pay. The Department of Personnel informed the Auditor that manual time entries in the Employee Self-Service system override the actual swipes and the Department of Personnel relies on the supervisor to review all entries prior to approval. The supervisor in Weights and Measures approved both time entries with the incorrect hours which resulted in the inaccurate shift differential pay.

Illustration 1:

ID	Start Date	End Date	Hrs	From	To	P Type	Att./absence type	Cost Ctr	Order	WBS Element
5	01/04/2023	01/04/2023	4.00	04:00	08:00	1002	Comp Time			
5	01/04/2023	01/04/2023	2.14	05:34	08:00	1019	Unauthorized OT Unpaid			
5	01/04/2023	01/04/2023	2.00	06:00	08:00	1002	Comp Time			
5	01/04/2023	01/04/2023	4.03	16:00	20:02	1019	Unauthorized OT Unpaid			

Illustration 2:

RAW TIME SWIPES									
EMP NO	NAME	TIME CARD	DATE	SWIPE TIME	TIME ADMIN	READER	BUILDING	ADDRESS	AREA
			01/04/2023	0554	539	WM_1_1	Weights & Measures Building	2380 Clinton St.	1st Floor
				2002	539	WM_1_1	Weights & Measures Building	2380 Clinton St.	1st Floor

Recommendation

The Auditor recommends that the appropriate supervisor in the Bureau of Weights and Measures carefully review any manual time requests entered by employees to verify the accuracy of the request and the employee’s eligibility.

In addition, the Department of Personnel should periodically review with the supervisors any unauthorized leave and overtime unpaid in their department to ensure employees are accurately compensated based on the actual hours work.

Finding 4: Compensation for Certain Hours Violated Erie County Travel Time Policy then in Effect.

During testing, the Auditor found that two employees, a Sealer and an Examiner, were compensated for overtime, second shift differential and third shift differential premiums while driving together in a County-owned vehicle to Albany for a necessary Weights and Measures equipment run on January 4, 2023.

The Sealer swiped in at 5:56 and swiped out at 20:00, for a total of 6.0 hours of overtime premium rate, 4.0 hours at the second shift differential premium rate for the hours of 16:00 to 20:00, and 1 hour at the third shift differential premium rate for the hour worked from 6:00 to 7:00. The Examiner swiped in at 5:54 and out at 20:02, accruing a total of 6.0 hours of comp time and should have received 4.0 hours of second shift differential overtime for the hours of 16:00 to 20:00, and 1 hour at the third shift differential premium rate for the hours of 5:00 to 6:00 but incorrectly received 4 hours of third shift premium (see Finding #3 above).

Per the Erie County Personnel Travel Time Policy Chapter VI, Section 12 in effect at the time, "County employees often travel to meetings, conferences and other work-related events outside their normal place of business. These events are often held within Erie County (town board meetings, meetings at schools, etc.) and are occasionally conducted outside Erie County (State or National conferences, seminars, etc.). The relevant policy reproduced below relates to the compensation of employees for travel performed in conjunction with such events.

Employees will not be compensated for travel time spent going to or from an event held outside of Erie County, if such travel was performed outside of the employee's normal

working hours. Therefore, an employee traveling to or from an event held outside the County will be compensated only for his/her normal working hours and will receive no additional compensation for travel performed going to or returning from the event. NOTE: Employees exempt from Fair Labor Standards Act (FLSA) will be compensated for travel time performed on their regular days off (normally Saturday and Sunday) only for such travel performed during their normal working hours.

While the Auditor found that both employees were paid in violation of the travel time policy as written, the Auditor also notes that withholding all pay for hours outside of the employees' regular schedule likely violates federal labor law. Because the required employee travel involved physical transportation of County equipment from Buffalo to Albany and the employees completed this task within the same day, per federal labor law 29 C.F.R. § 785.37, the travel is "performed for the employer's benefit and at his special request to meet the needs of the particular and unusual assignment", and counts such time necessarily spent traveling as hours worked, even when those hours stretch beyond the employee's regular working hours.

Recommendation

The Auditor recommends that the Bureau of Weights and Measures adhere to the Erie County Travel Time Policy that is in effect for compensable hours.

In addition, the Auditor recommends that the Department of Personnel work with Division of Budget and Management to review and revise the Erie County Travel Policy - Employee Compensation During Travel to comply with applicable Federal Labor Standards.

AUDITOR'S COMMENTS

Comment 1: Noncompliance with the Swipecard Policy Exceeded 35%.

During testing, the Auditor found that 18 of 47 transactions tested had missing swipes recorded in ESS. If a missed swipe is not corrected, the system will record the entry as "Unauthorized Leave Unpaid" on the employee's paystub.

Employees are required to record attendance and timeliness by swiping their employee identification badge at their designated swipe card reader. "Swipes must be recorded when reporting to work at the beginning of the workday, when leaving for and returning from meal periods, and when leaving work at the end of the workday." Consistent violations are subject to disciplinary action. The correction procedures described in Finding 2 are intended as remedial measures for those who inadvertently miss a swipe to ensure there is not a loss in pay for hours worked due to oversight. The procedures are not meant to serve as an alternative to swiping in and out at required times.

Because missed swipes must be manually entered or corrected by the employee after-the-fact, the Auditor could not verify the hours actually worked for those days or validly reconcile recorded hours to the daily attendance reports. Due to entries deemed "Unauthorized Leave Unpaid", employees were not properly compensated for premium hours actually worked in excess of a 40-hour work week because manually recorded overtime and comp time entries were automatically adjusted to a straight time rate. The Auditor

found that in most instances, the straight time rate was corrected to the premium overtime rate in the following payroll cycle.

The Auditor found that in 18 of the 47 total transactions tested, the employee failed to swipe in, failed to swipe out, or both. The Raw Swipe Report, an individual account of employee time data based on swipe station input, records the presence and absence of employee swipes in the County's accounting system. Specifically, 38% of the tested transactions revealed a likely violation of County policy.

Recommendation

The Auditor recommends that management in the Bureau of Weights and Measures implement measures to ensure all employees are adhering to the Swipecard Policy especially when employee is seeking approval for overtime pay.

Comment 2: Noncompliance with Department's Overtime Procedures Exceeded 30%.

Internal procedures in place within the Bureau of Weights and Measures used to monitor overtime were inconsistently followed. Specifically, employees who work overtime are to complete overtime logs describing their activities during that time, as per department procedures. The Auditor noted that in several instances, those logs were not accurately or adequately completed prior to management approval.

During testing, the Auditor determined that 15 of 47 samples tested were missing the required departmental reports for monitoring, approving and paying overtime: daily minute, daily attendance and/or overtime payment method reports. In some instances, both the daily minute and daily attendance reports were present but logged no time or activity and/or was missing an overtime payment method. Therefore, the Auditor was unable to verify the accuracy of the dates, hours and/or payment method to the information obtained from the County's accounting system and the employees' pay stubs.

Seven of the 15 samples tested were overtime hours worked by Senior Account Clerks, for which there were no logs of work performed or completed. The Auditor determined the Senior Account Clerk did not follow the procedures in place for monitoring the overtime activity. The Auditee stated that the supervisor discusses the work to be completed. However, it is unclear why Senior Account Clerks would be exempt from a recordkeeping policy designed to monitor overtime and the necessity thereof by virtue of their title.

Recommendation

The Auditor recommends that employees working overtime hours follow department procedures by consistently and accurately completing all forms provided by the department and that supervisors ensure completion of forms prior to approval.

In addition, the Auditor recommends that the supervisor authorizing overtime for the Senior Account Clerk hold that job classification to the same standard as other job classifications within the department by having them follow department procedures for substantiating the necessity of overtime hours.

Comment 3: Noncompliance with the Lunch Period Policy Exceeded 60%.

During testing, the Auditor found that 30 out of 47 transactions tested reflected lunch breaks that were taken during the last hour of the day. This is not in compliance with the Erie County Personnel Policy for Lunch Periods (Lunch Period Policy) which prohibits employees from scheduling lunch periods “for the first or last hour of the day”. and New York Labor Law § 162 states “The noon day meal period is recognized as extending from eleven o'clock in the morning to two o'clock in the afternoon.”

Recommendation

The Auditor recommends that department management ensure that all employees adhere to the Erie County Personnel Policy for Lunch Periods which states, “lunch periods should not be scheduled for the first or last hour of the day and may not be divided into smaller units.”

Comment 4: Straight Time Worked is being Accrued as Straight Compensatory Time.

The Auditor found four entries for four separate employees where compensatory time was accrued at the one and a half overtime rate on a Saturday and approved the following Monday without the employee meeting the CBA requirement of working 40 regular hours per week. The compensatory time accrual was adjusted to reflect a straight time rate after sick and personal time entries were submitted later in the same week.

Per the CBA Article XVI Overtime, Section 16.6: "All employees who actually work over eight (8) hours in any workday, or forty (40) hours per week shall be paid time and one-half times such employee's straight time hourly rate, for all hours worked in excess of eight (8) hours in any workday or forty (40) hours per week. Excluded from computation of forty (40) hours per week to be worked for purposes of the overtime premium of time and one-half are all sick and personal leave hours. All other paid leave time, including paid lunch hours and compensatory time shall be counted as time worked."

The Auditor could not find any language in the CBA or applicable policy relating to comp time earned at a straight time rate. Per the CBA Article XVI Overtime, Section 16.10: "Each employee who desires compensatory time off shall accumulate the aforementioned time at the rate of time and one-half (1-1/2) for each hour or part thereof worked." It must be noted that this is an issue Weights and Measures has no control over. Time accruals are automatically calculated based on the programmed rules within the County's accounting system and are administered by the Department of Personnel.

Recommendation

The Auditor recommends that the Department of Personnel take action to facilitate system adjustments necessary to accurately reflect categories of time based on the CBA. If the intent of the applicable CBA provisions was to allocate time in this manner, the Auditor recommends that future negotiations push for clearer language regarding comp time earned at a straight time rate because it could cause the County to incur a greater payout in the future when the employees' hourly rate is higher.

RESULTS OF EXIT CONFERENCE

An exit conference was held on July 10, 2024, with the Commissioner of Public Advocacy, the Director of Bureau of Weights and Measures and the Budget Director. The draft audit report was reviewed and discussed resulting in minor changes. The Erie County Comptroller would like to thank the Commissioner of Public

Advocacy, the Commissioner of Personnel, the Budget Director and their respective participating staff members for the courtesy extended to the Division of Audit during the course of the audit.

In accordance with Erie County Charter Section 305, the Office of Public Advocacy should prepare a written response to the County Executive outlining the plan to address the findings and recommendations identified in the audit report.

ERIE COUNTY COMPTROLLER'S OFFICE

cc: Hon. Mark C. Poloncarz, County Executive
Mark Cornell, Director of Division of Budget & Management
Karen L. King, PhD., Commissioner of Public Advocacy
Charles LaMarca, Director of Weights and Measures
Brian Bray, Commissioner of Personnel
Erie County Fiscal Stability Authority

APPENDIX A

Department of Personnel's Response to the Draft Audit Report

July 3, 2024

Mary Nytz-Hosler
Deputy Comptroller for Audit
95 Franklin St - 11th Floor
Buffalo, NY 14202

Dear Deputy Comptroller Nytz-Hosler:

Thank you for identifying that the County's payroll system was not calculating shift differential for CSEA employees in a manner consistent with the collective bargaining agreement. We agree with your analysis and findings.

The logic that pays the contractually required shift differential to employees in 24-hour operations after four hours is shared by employees who work traditional shifts. If we removed the requirement altogether, 24-hour employees would have to make a separate request to SAP for a shift differential for each 2nd or 3rd shift they worked. Such a change would cause a great deal of extra work for the employee and their time approver, and it would likely result in time entry errors that would cause employees to be paid incorrect amounts.

In our internal conversations to identify how we would appropriately fix this issue so that employees who worked traditional shifts only received shift differential when scheduled involuntarily, we determined that the County did not have employees capable of reprogramming SAP to the extent needed. Fixing this issue would require the County to use outside programmers, which we believe would cost significantly more than continuing the practice. Given that the County is currently exploring an overhaul or upgrade to SAP, we believe this fix is not in the taxpayer's best interest at this time. Instead, it would be more appropriate to fix this when the county updates its ERP software.

We have estimated that, in 2023, this issue resulted in 1048.18 hours in which an employee may have inadvertently received shift differential, costing the County a maximum of \$2,888.58. While I do not want to minimize the inadvertent overpayment, it is essential to weigh the cost of correcting this issue against the potential financial impact. Given the significant expense of programming these changes and the relatively modest overpayment, it appears more prudent to address this issue when we overhaul or upgrade SAP.

Thank you.

Sincerely,



Shawn Lavin
Deputy Commissioner of Personnel

cc: Kimberly Kajdasz, Deputy Budget Director