



The Commonwealth of Massachusetts  
Office of the Inspector General

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November 21, 2011

Richard J. Cushing,  
Chairman, West Newbury Board of Selectmen  
381 Main Street,  
West Newbury, MA 01985

Dear Mr. Cushing:

On November 1, 2010, the Office of the Inspector General (the OIG) received information that the West Newbury Finance Director (who no longer holds the position) had allegedly caused herself to be paid on thirteen occasions an annual Merit Bonus of \$2,500 to which she was not entitled either by the terms of her contract or by authorization of the Board of Selectmen.

On December 8, 2010, the West Newbury Board of Selectmen (the BoS) voted in executive session to "request an audit by the Inspector General's Office regarding the inconsistencies in the Finance Department." These "inconsistencies" included both the annual Merit Bonus referred to above and certain salary overpayments allegedly made to the Finance Director.

In February of 2011, the BoS entered into discussions with and subsequently retained the firm of Melanson Heath & Company, P.C. (Melanson Heath) to ". . . perform a forensic internal control review . . ." to ". . . assist . . . in evaluating internal controls over payroll." The review would focus on salaries paid to ". . . the top ten compensated Town employees" (which would include former Finance Director) and an "additional 10 employees randomly sampled from remaining employees." Another principal area of the review would be "checking contracts for employees with contracts to see that compensation paid reconciles to the contracts."

The OIG's review included record review and interviews of several current and former Selectpersons whose terms covered the periods in question, and current and former employees of the Town's Finance Department (including the former Finance Director and current and former key personnel within the Finance Department). We also reviewed a draft copy of the Melanson Heath report. This letter contains our findings, conclusions and recommendations.

As a result of the detailed review described in this report, the OIG concludes that the former West Newbury Finance Director did not engage in wrongdoing with respect to receipt of Merit Bonuses and salary overpayments from the Town of West Newbury.

Issue #1: Did the former Finance Director cause herself to be paid annual merit bonuses to which she was not entitled under the provisions of her contract or absent the permission of the Board of Selectmen.

The former Finance Director's FY1997 contract contains two sections relevant to this allegation. The contract provides, in relevant parts, the following provision concerning fringe benefits:

"3. Compensation: . . .

b. (4) Special Fringe Benefits which are defined in consultation with the Finance Director,"; and

"10. Fringe Benefits: . . . The Board of Selectmen and the Finance Director may agree to expand components of these benefits or to add benefits not currently available to other professional personnel in the Town; if this is done, an annex will be signed, dated and attached to this contract."

The FY2002 and subsequent contracts for the former Finance Director state, in relevant part, that former Finance Director could receive:

"3. Compensation: . . .

c. (4) Special Fringe Benefits which are defined in consultation with the Finance Director"; and

"10. Fringe Benefits: . . . The Board of Selectmen and the Finance Director may agree to expand components of these benefits or to add benefits not currently available to other professional personnel in the Town." (Note the absence of the "annex" clause in these contracts.)

The OIG's assessment of the contract language leads us to conclude that the bonuses in question would have been authorized by Section 3 b. (4) before FY2002 and by 3 c. (4) thereafter.

A former BoS member (and later a BoS Chairperson) informed the OIG that, not long after the member had been elected to a first term on the BoS, the member had met with a predecessor on the Board, a retired long time Town official who had been Chairman of the BoS at the time of the initial bonus related discussions with the former Finance Director, concerning her desire to be paid an annual Merit Bonus. According to the former BoS member, the former BoS Chairperson explained that the BoS had "intentionally" left explicit mention of the annual Merit

Bonus out of former Finance Director's contract because the BoS wished to retain the ability to award it to her or not at their "discretion." According to the former BoS member, the former Finance Director would put the bonus on the Town warrant and the BoS "either signed it or didn't." According to the former Chairperson, the BoS didn't want to "advertise" that the former Finance Director was receiving the annual Merit Bonus because then "everyone wants one."

The OIG review found that from FY1997 through FY2009, the former Finance Director's annual Merit Bonus appeared as a line item on a payroll warrant (usually one of the December payroll warrants), described as "merit bonus." Each such warrant had been signed by at least two sitting selectpersons, as required by law.

Massachusetts General Laws, c.41, §56, which specify the duties of the Selectpersons of a town regarding appropriations and approval of expenditure of public monies, states in relevant part:

Section 56: The selectmen and all boards, committees, heads of departments and officers authorized to expend money shall approve and transmit to the Town accountant as often as once each month all bills, drafts, orders and pay rolls chargeable to the respective appropriations of which they have the expenditure. Such approval shall be given *only after an examination to determine that the charges are correct . . . the treasurer shall pay no money from the treasury except upon such warrant approved by the selectmen . . . .*  
[Emphasis added]

The statute requires that Selectpersons examine the charges of warrants they approve and ensure that the charges are correct. Absent such express approval, no payment from Town funds can be made by the treasurer.

Three former Selectmen interviewed by the OIG, whose terms cover most of the relevant years, recalled having been aware of the annual Merit Bonus at the time and approving the Merit Bonuses by signing the warrants<sup>1</sup>.

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<sup>1</sup> Another former Selectman, in office at the time the merit bonus was initially presented to the BoS, and who later served a second term, had a memory different from that of other former Selectpersons interviewed above and both current and former Finance Department staff. He recalled a "non-contract, one time" bonus being given to the former Finance Director. He claimed to have been unaware that the annual Merit Bonus was being paid to the former Finance Director during his two terms on the Board of Selectmen. This former Selectman conceded that he might not have reviewed every detail of the warrants approved by the BoS.

He stated that when he reviewed the payroll warrants, he focused largely on Town departments' overtime expenditures. This former Selectman stated that he "surmise(d)" that

When asked if she had intended to “sneak” the bonus by the BoS or to “hide” it from them, the former Finance Director responded: “Absolutely not. That’s why I broke them out on the payroll vouchers. It was never concealed.” She stated that she had followed the same practice “year after year,” by adding it to a payroll warrant, usually near the end of December as she had been verbally directed to do by the Chairman of the Board of Selectmen that approved payment of her first annual Merit Bonus in 1997.

In FY2010 and FY2011, the former Finance Director’s annual Merit Bonus was not delineated on a Town payroll warrant but was instead included in her biweekly salary. The OIG interviewed current and former Finance Department staff and reviewed documentary materials from a number of sources to ascertain the reason why the merit bonus was reported differently in those two years. From this review, we learned the following:

In July of 2009, the long time West Newbury Town Accountant was getting ready to retire and was training the newly hired (incoming) Town Accountant. The former Finance Director was on vacation during the last week of June and the first week on July and was not in the office during this period. This period also marks the last week of the Fiscal Year for the Town and the beginning of the new Fiscal Year.

Prior to her departure on vacation, the Finance Director left the Town Accountant(s) with a spreadsheet (see Appendix A), detailing the rate of pay and total amounts allocated by Town Meeting for Town employee remuneration. For certain employees, such as the Finance Director, Police Chief and Town Accountant, the “2% increase” column (showing the amount of raise for the coming Fiscal Year) was listed as “contract” and the “New Rate” column was left blank. According to the former Finance Director, this was intended to alert the Town Accountant of the need to review the specific contract terms for each of those employees to arrive at the proper bi-weekly rate. The Finance Director had delineated the total amount of money allocated in the budget for each employee’s “total wages.”<sup>2</sup> The total annual allocation

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the reason the former Finance Director handled her bonus this way because she may have been directed to do so by the now deceased former Chairman of the BoS.

<sup>2</sup> We note that the term “Total Wages” appearing in Appendix A included such varying types of compensation as salaries for full time Town employees, stipends for Town Board members like the Selectmen and Assessors, and hourly and drill rates for call firefighters. The characterization of all compensation as “wages” is not at odds with judicial interpretations of the term “wages” in Massachusetts. In Jancey v. School Committee of Everett, 421 Mass. 482, 490-493 (1995), affirmed 427 Mass.603 (1998), the Supreme Judicial Court broadly defined “wages,” as used in G.L. c. 149 § 105D:

“The terms “wages” and “wage rate” are not defined in the statute. Neither are they defined in any interpretive regulation or other administrative materials.

for the Finance Director's compensation of \$115,143.00 included her salary, longevity bonus, and annual merit bonus. The "Total Wages" figure was divided by the incoming Town Accountant by 26 to arrive at a biweekly salary figure.

The Town Accountant explained that in FY2010, she had had difficulty ascertaining the Finance Director's salary from the text of her contract. She stated: "I couldn't figure out what to pay her" because the budget allocation (i.e., the Total Wages column of Appendix A) and the contract didn't "jibe."

In a December 8, 2010 memorandum to the then Chairman of the BoS, the Town Accountant explained, in relevant part:

At some point during the original process of gathering historical documentation for the Finance Director's annual merit bonus, it became evident that the annual Merit Bonus had been rolled into the base figure in calculating the salary for FY2010.

The error was compounded in FY2011 when the Town Accountant, still unaware of the error from FY2010, multiplied the Finance Director's FY2010 salary by 1.0333 to accommodate the

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As the statute does not effectively define [the terms 'wages' and 'wage rate'], we have said that the Legislature should be supposed to have adopted the common meaning of the word, as assisted by a consideration of the historical origins of the enactment." *Westinghouse Broadcasting Co. v. Commissioner of Revenue*, 382 Mass. 354 , 357 (1981), quoting *First Data Corp. v. State Tax Comm'n*, 371 Mass. 444, 447 (1976). *Black's Law Dictionary* 1579 (6th ed. 1990) defines "wages" [as follows:]

"Every form of remuneration payable for a given period to an individual for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, housing, lodging, payments in kind, tips, and any other similar advantage received from the individual's employer or directly with respect to work for him. . . . Term should be broadly defined and includes not only periodic monetary earnings but all compensation for services rendered without regard to manner in which such compensation is computed. . . ."

[See *Commissioner of Revenue v. AMIWoodbroke, Inc.*, 418 Mass. 92 , 96-97 (1994); *Concord Rod & Gun Club, Inc. v. Massachusetts Comm'n Against Discrimination*, 402 Mass. 716 , 721 (1988).]

former Finance Director's 3.33% pay raise for that year. In her November 29, 2010 memo to the BoS, the Town Accountant explained, in relevant part:

It is my recollection that I continued to utilize the weekly PR amounts for FY2010 that were already established on the warrants during the transition period with the prior Town Accountant . . . to pay the Finance Director. In order to calculate FY2011 weekly PR amounts for the Finance Director I simply multiplied the FY2011 weekly rate by 1.0333 (per the contract). However, I did not realize that the merit pay was included in FY2010 base calculation. I have since recalculated the FY2011 pay to correct this and the final total salary for the fiscal year will align with the contract amounts excluding the annual merit bonus.

In an interview with the OIG, the retired Town Accountant took responsibility for the original (FY2010) "mistake" saying: "It was a crazy time . . ." explaining she was trying to finish a number of things before she retired. She was also training the incoming Town Accountant at that time. However, she stated: "It's my fault because I was the Town Accountant" and "I will take the responsibility for it."

As part of its review of the matters, the Town retained Melanson Health to perform a review of salaries paid to a representative sample of Town officials and employees. The Melanson Health report, still in draft form at this time, has been obtained and reviewed by this office. We observed the following section that states in relevant part:

We were told that upon completion of the budget process, including Town meeting, the Finance Director prepares a detailed employee wage calculation worksheet, which reports the wage for each employee for the upcoming fiscal year. This worksheet is based on the union contracts, individual contracts and annual increases included in the approved budget. This document was annually titled "Employee Compensation Policy."

Based on the foregoing, the OIG concludes that the plain language of the former Finance Director's contracts from FY1996 through the end of the most recent contract in FY2011 permitted the BoS to pay and the former Finance Director to receive this annual merit bonus, and further that the BoS did authorize such payments.

Allegation #2: Former Finance Director received a larger salary than permitted by her contract.

In a December 6, 2010 memo to the BoS from former Finance Director she alerts the BoS to the overpayments she has received. That memo states in relevant part:

As a result of the questions that arose during my contract negotiations, I decided to audit the wages paid to me during the contract term. I began by researching the payroll vouchers and warrants in the records storage room and

was able to create a spreadsheet documenting the wages paid throughout the 27 pay periods for each fiscal year (exhibit not included).

During this review, I was surprised to discover that in FY2007 there was an overpayment of \$5,056.47. Although it does not reconcile to the penny, all indications are that the bonus amounts were rolled into the wage calculation. When the bonus vouchers were submitted for payment, this created the overpayment. In addition, each subsequent fiscal year ended in a small overpayment.

Once discovered, I contacted said Town Accountant to determine how these errors may have occurred. In reviewing the biweekly wage calculations with both the prior and the current Town Accountants I have come to understand that each fiscal year has 261 days, or 2088 hours. It is likely that the biweekly wage was calculated using 2,080 hours or 26 pay periods as is noted in the contract (exhibit not included).

As we suspect that this may be a systemic problem, the current Town Accountant has implemented a new policy (exhibit not included) to ensure that the calculation of all contract wages is done using the 2,088 hours and that a reconciliation of contract wages paid is prepared at the end of each fiscal year. Although I do not perform the payroll tasks, as Finance Director, I am ultimately responsible for their approval . . . I should have caught this error, but did not.

In a December 8, 2010 memorandum to the then Chairman of the BoS, the Town Accountant shared her understanding of the situation and explained, in relevant part:

At some point during the original process of gathering historical documentation for the Finance Director's annual merit bonus, it became evident that the annual Merit Bonus had been rolled into the base figure in calculating the salary for FY2010. I was not aware of this fact in July of 2010 when I calculated the FY2011 biweekly salary for the Finance Director and I simply applied the contracted increase of 1.033 to the prior year's bi-weekly salary figure. Realizing there was an error that needed to be corrected, I proceeded to calculate the correct biweekly figure utilizing the base contract salary established for FY2011, compared it to what had already been paid and evenly adjusted the remaining biweekly salaries so that the total wages paid for FY2011 would reconcile to the base FY2011 salary plus longevity. The prepared schedule outlining the above analysis (which you are in receipt of as well) was given to the Finance Director who implemented the change to reflect on the biweekly payroll schedules including and going forward from PW 11-10.

It is my practice with all errors and discrepancies found on payroll and expense warrant schedules to make the corrections accordingly and notify the department head of the change.

On December 14, 2010, the former Finance Director wrote a personal check in the amount of \$5,056.47 in repayment of wages paid in error as detailed in her memorandum above.

On December 28, 2010, the former Finance Director wrote another personal check in the amount of \$1,504.98 for repayment of wages paid in error. Unlike the detailed December 6, 2010 memorandum to the Board of Selectmen explaining the reasons for her repayment of a \$5,056.47 salary overpayment (excerpted above), according to the Town Accountant, no such memorandum exists to explain the rationale for former Finance Director's repayment of \$1,504.98. While the Town Accountant stated that she was not employed by the Town during the period of these salary overpayments, she stated that she subsequently learned that the overpayments to former Finance Director occurred due to salary miscalculations that used the incorrect number of work days in the fiscal year to pay Town employees.

The Town Accountant advised the OIG that the former Finance Director had determined that when the correct number of days for each fiscal year was used, she had been overpaid \$685.66 in FY2008, \$407.54 in FY2009, and \$411.78 in FY2010. The total of these overpayments is \$1,504.98. The Town Accountant further advised that the overpayments are approximately equal to one day's pay in each of those years.

Also, former Finance Director's salary was reduced by \$145 per pay period until she left her position to ensure that her biweekly salary was in conformity to the stipulated terms of her contract (excluding the annual Merit Bonus).

In their review of "potential payroll discrepancies" within the Town, Melanson Heath identified a number of items which they detailed in their draft report. Some of those items are excerpted below:

As of January 1, 2006, the Town switched the payroll processing system to a new vendor. At that time, employees and their respective rates were entered into the payroll system. However, rates were rarely, if ever updated in the payroll system for existing employees. Rate information for new employees was always entered into the system, but again, rarely updated. To process payroll, the gross pay as calculated by the respective department pay sheets, was entered into the system, as calculated by the departmental salary schedules. We found this practice was consistent with prior payroll software as well. Among other weaknesses discussed below, this process makes it very difficult, in many cases impossible to verify that the amounts paid to employees above their base pay were appropriate. Specific instances will be referenced later in the report.

The Finance department was not utilizing the software system as it was designed and intended to be used. The software system was designed to calculate the gross pay for each employee based on the hours entered and the rate information already maintained within the system. This process was designed to ensure that pay rate

information would not change, unless it was manually changed by the Finance department. The intended control over the ability to change pay information, as well as track those changes was not realized. Utilizing the controls built into the software would help reduce the likelihood of errors or irregularities occurring without detection.

We found the internal control framework over payroll to be significantly deficient. . . .

. . . Our payroll testing did not include every payroll transaction for every employee for the period tested. Our findings are based on the supporting documentation that was available for review. We were told certain payroll records had been destroyed, consistent with record retention rules established by the Massachusetts Secretary of State's Office. Accordingly, our testing would not identify all potential payroll variances that would have occurred during that period tested . . . .

Later, the draft report notes that a significant number of other town officials and employees, in addition to former Finance Director, received salary payments in excess of their contracts during the same period. The draft report identifies a number of town officials and employees including the Police Chief, former Finance Director, Town Accountant, and Superintendent of the DPW who received compensation over and above the stated terms of their contract, due to many of the same problems that had resulted in overpayments to the former Finance Director.

#### Conclusions and Recommendations:

As a result of the detailed review described in this report, the OIG concludes that the former West Newbury Finance Director did not engage in wrongdoing with respect to receipt of Merit Bonuses and salary overpayments from the Town of West Newbury.

Our investigation, and Melanson Heath's review, have identified weaknesses in the practices for calculating and paying Town employee's salaries. Policies and procedures need to be strengthened to correct these weaknesses. Also, the BoS must craft more precise employee contracts with less ambiguity. The OIG recommends that Town officials establish practices that more clearly delineate and document official decisions. Town employee's contracts should precisely detail the terms and conditions of employment, including duties and responsibilities, and the specific amounts of remuneration for such employment including so-called merit bonuses (if appropriate).

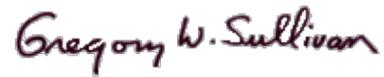
The OIG anticipates that efforts will be made to recoup any overpayments as identified in the final Melanson Heath report.

As a final note, the OIG wishes to thank the current and former Selectpersons, as well as the

Richard J. Cushing  
November 23, 2011  
Page 10

current and former Town employees interviewed, for their cooperation and assistance in this matter.

Sincerely

A handwritten signature in black ink that reads "Gregory W. Sullivan". The signature is written in a cursive style with a large initial 'G'.

Gregory W. Sullivan  
Inspector General

Cc: State Representative Harriet Stanley  
John Sullivan, Shareholder, Melanson Heath & Company, P.C.  
Newbury Town Administrator Tracy Blais