



Office of the Public Auditor
Commonwealth of the Northern Mariana Islands

Audit of Overtime Claims of a
Public School System
Administrative Officer



Letter Report
LT-98-01



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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January 7, 1998

Ms. Margaret Dela Cruz
Acting Commissioner of Education
Public School System

Dear Acting Commissioner Dela Cruz:

Subject: Final Letter Report on the Audit of Overtime Claims of a Public School System Administrative Officer (Report No. LT-98-01)

This report presents the results of our audit of overtime claims of a Public School System (PSS) Administrative Officer. The objective of the audit was to determine whether the Administrative Officer is entitled to overtime payment.

Our audit showed that the Administrative Officer is not entitled to the overtime claim of \$11,867 because (1) there was insufficient evidence to establish her as a "non-exempt" employee entitled to overtime pay, and (2) specific requirements in the personnel regulations for overtime payment were not met.

We recommended that PSS formally dismiss the claims of the Administrative Officer for overtime pay unless the Administrative Officer could produce evidence that characterized her as a "non-exempt" employee and thus entitled to overtime. Any such evidence submitted should be evaluated by PSS.

In his letter response on November 19, 1997 (APPENDIX B), the Commissioner of Education stated that the Administrative Officer had not presented any additional evidence to PSS that characterized her as a "non-exempt" employee entitled to overtime pay, and he therefore had decided to dismiss the claims of the Administrative Officer for overtime pay. He provided us a copy of the memorandum issued to the Administrative Officer by the PSS Legal Counsel (through the Commissioner) regarding formal dismissal of claims of the Administrative Officer for overtime pay.

Based on the response we received from the Commissioner, we consider the recommendation closed.

BACKGROUND

In early August 1997, a PSS official requested the Office of the Public Auditor to audit overtime claims by a PSS employee holding an Administrative Officer III position. The official stated that PSS may have violated the PSS Personnel Rules and Regulations and the federal Fair Labor Standards Act (FLSA) for non-payment of overtime due to the Administrative Officer.

The Administrative Officer stated that during the period September 1996 through April 1997, she was not paid overtime totaling \$11,867 for the 470 hours she performed in excess of the 40 hour work week requirement. According to the Administrative Officer, she was required to perform more than one person's job, functioning both as the Deputy Commissioner for Administration's (DCA) secretary as well as the coordinator for both the Teacher Substitution¹ and After School² Programs. She claimed two hours work at home daily performing the duties of the Teacher Substitution Program Coordinator from 5:00 a.m. to 7:00 a.m. Then she reported at the DCA office at 7:30 a.m. and stayed to 6:00 p.m., for an average of about 11 to 12 hours a day. While in the DCA office, she provided secretarial support and other clerical duties for the DCA, and performed administrative responsibilities such as payroll computation and reports preparation for the Teacher Substitution and After School programs.

OBJECTIVE, SCOPE AND METHODOLOGY

The objective of the audit was to determine whether the Administrative Officer is entitled to overtime payment. We analyzed the Administrative Officer's actual duties and responsibilities; accounted for the overtime hours being claimed by reviewing weekly summary time sheets and daily time cards from September 1996 to April 1997; examined correspondence and other documents related to the Administrative Officer's employment; and interviewed PSS personnel responsible for this matter.

We performed our audit at the PSS Office in Saipan in August 1997. The audit was made, where applicable, in accordance with Government Auditing Standards issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures as were considered necessary in the circumstances. Because of the limited scope of our audit, we did not evaluate any other internal controls.

¹ Under the Teacher Substitution Program, regular teachers who were not available for the day were required to call a dedicated voice mail before 5:00 a.m. and leave their message for the Administrative Officer III. The Administrative Officer III would then call teachers in a substitute available pool, arrange a substitution schedule for affected schools, and call the schools no later than 7:00 a.m. to inform school officials of the substitution.

² The After School Program is focused upon the goal of providing tutorials, mentoring, counseling, enrichment, and role modeling to economically and educationally disadvantaged students.

FINDING AND RECOMMENDATION

The Administrative Officer is not Entitled to her Overtime Claim

Under the revised PSS personnel regulations and the FLSA, employees who work more than 40 hours are entitled to overtime payment, unless they work in an executive, administrative, or professional capacity in which case they are considered to be FLSA exempt and not entitled to receive overtime payment. The “Administrative Officer III” position is classified as FLSA exempt by both the CNMI and PSS Personnel Offices because employees in this position generally meet all the requirements established under FLSA tests to determine exempt status, and therefore this position is generally not eligible for overtime. Employees in this position, however, may be eligible for overtime if any of the requirements to be considered FLSA exempt are not met. Furthermore, under the previous personnel regulations, specific requirements had to be met before an employee would be entitled to overtime payment. Our audit showed, however, that the Administrative Officer is not entitled to overtime because there was insufficient evidence to show that any of the FLSA exempt requirements were not met. In addition, specific requirements in the previous personnel regulations for overtime payment were also not met. The complaint for non-payment of overtime might have been avoided had PSS properly documented the Administrative Officer’s assignment to an FLSA exempt position. Nevertheless, the Administrative Officer did not claim overtime pay during the seven-month period that she had been timed in for more than 40 hours per week. As a result, the Administrative Officer is not entitled to her overtime claim of \$11,867 in the absence of supporting evidence to establish her as a “non-exempt” employee, and because personnel regulation requirements for overtime compensation were not met.

Regulations on Overtime

1. Revised PSS Personnel Regulations

§1503 of the revised PSS personnel regulations (Regulations for the PSS Employment of Non-Certified Personnel³, which took effect on January 25, 1997) incorporated several provisions of the FLSA relating to overtime, in particular a provision prohibiting an employer from having an employee work more than 40 hours in a work week without paying the employee 1 ½ times the employee’s regular rate for each hour of overtime. The regulations, however, exempt from the application of this rule employees who work in an executive, administrative, or professional capacity.

The “Administrative Officer III” position is classified as FLSA exempt by both the CNMI and PSS Personnel Offices because employees in this position generally meet all the requirements established under FLSA tests to determine exempt status, and therefore this position is generally not eligible for overtime. In our discussion with the PSS Acting Human Resources Officer, he stated that PSS classified the Administrative Officer III position as an FLSA

³ §1101 of the regulations defines “Non-Certified Personnel” as follows: Those persons hired to work as either a teacher or a librarian are required to be certified by the Board of Education under 3 CMC §1181. The terms “teacher” and “librarian” do not include volunteer assistants, teaching interns, teacher aides, guest lecturers, and student teachers. All other employees of the PSS are considered non-certified personnel.

exempt position. He provided us a list of the PSS FLSA exempt positions, and Administrative Officer III was included in the list. Furthermore, the Director of Personnel of the CNMI Office of Personnel Management issued a complete list of overtime status determinations for all government employees. In our review of the partial list, we noted that all employees in the “Administrative Officer III” position were classified as FLSA exempt while those in Administrative Officer I and II positions were classified as non-exempt. The Department of Finance Payroll Supervisor was asked if what we noted was generally true for all government employees, and she said yes.

Employees in Administrative Officer III position, however, may be eligible for overtime if any of the requirements to be considered FLSA exempt are not met. The FLSA provides for long and short tests⁴ to determine whether an employee is exempt or not. In the case of the PSS Administrative Officer, she should be subjected to the short test because of her high basic salary (\$35,013 per year). The FLSA exempt requirements provided in the short test under §242 are as follows: (1) Compensation: Is paid at least \$250 per week exclusive of board, lodging, or other facilities (On a yearly basis, \$250 per week equals about \$13,000 per year). (2) Duties: Primarily (more than 50 percent) performance of office or non-manual work directly related to management policies or general business operations, or the performance of functions in the administration of an educational establishment or subdivision thereof, in work directly related to the academic instruction or training. (3) Responsibilities: Primary duty includes work requiring the exercise of discretion and independent judgment.

2. Previous PSS Personnel Regulations

§ 4215.A and B of the previous PSS personnel regulations (titled Public School Personnel System Rules and Regulations, which were in effect from 1990 to January 24, 1997) required that any employee who is directed to work and does work in excess of 40 hours a week shall be paid overtime at the rate of 1½ times his basic pay. Such overtime work must be directed to a specific objective or goal of accomplishment, and it cannot be accomplished during the regular workday nor postponed to the following day or days.

PSS required that all overtime or compensatory time (comptime) performed must have been requested and approved in advance through a “Request and Authorization” form, which showed information such as (1) estimated work hours requested, (b) purpose and justification for the request, (c) names of employees who were directed to work, and (d) beginning and ending dates and time of the work.

The Administrative Officer is not Entitled to Overtime Payment

During the period from September 10, 1996 through March 31, 1997, the Administrative Officer’s time cards showed that she worked 488 hours in excess of the 40 hour work week requirement (equivalent to \$11,339 overtime pay). Our audit showed, however, that she is not entitled to

⁴ Determining which test to use in classifying an employee depends on the salary of the employee. The short test calls for compensation of not less than \$13,000 per year; while the long test requires compensation of not less than \$8,060 per year.

overtime because there was insufficient evidence to show that any of the FLSA exempt requirements were not met. In addition, specific requirements in the previous personnel regulations for overtime payment were also not met.

No Evidence to show that any of the FLSA Exempt Requirements were not Met

Despite working beyond regular hours, the Administrative Officer, as an Administrative Officer III, is classified as FLSA exempt from overtime. Had her actual work status failed to meet one or more of the requirements to be considered FLSA exempt, then, she could be considered “non-exempt” and would then be entitled to overtime. Our audit showed, however, that there was insufficient evidence to show that any of the FLSA exempt requirements were not met. First, her salary of \$35,013 was more than the minimum annual salary of \$13,000 provided in the first exempt requirement. Second, although the Administrative Officer’s actual duties differ from the position’s job description, and she claimed that only about 43 percent of her time was spent performing non-manual work directly related to management policies, her immediate superior, the DCA, disagreed. The DCA’s estimate was about 79 percent, which was above the 50 percent ceiling set forth in the second exempt requirement. Third, in performing the non-manual work directly related to management policies, she generally exercised discretion and independent judgment, which was stated in the third exempt requirement.

Our analysis of the Administrative Officer’s actual duties and responsibilities showed that the Administrative Officer and the DCA agreed on the duties’ descriptions; however, they disagreed as to the percentage of time spent in performing the duties. The Administrative Officer estimated that only about 43 percent of her time was spent performing administrative responsibilities of the Teacher Substitution and After School Programs (non-manual work directly related to management policies), which if confirmed by the DCA, could qualify her as a “non-exempt” employee by not meeting the second exempt requirement in the short test. The DCA, however, disputed the estimated percentage, and stated that the Administrative Officer spent a major portion of her time (about 79 percent) performing administrative responsibilities of the two programs and only about 21 percent performing secretarial support and other clerical duties for the DCA. The DCA also stated that in the administration of the two programs, the Administrative Officer generally exercised discretion and independent judgment. (see APPENDIX A for the analysis performed on the Administrative Officer’s actual duties and responsibilities)

Specific Requirements in the Previous Personnel Regulations for Overtime Payment were not Met

The audit also showed that specific requirements in the previous personnel regulations for overtime payment were not met because there was no written directive from the Administrative Officer’s immediate superior (i.e., Request and Authorization forms) or other evidence requiring her to perform overtime, and the work performed was not directed to a specific objective which could not be either accomplished during the normal work day or postponed to the following day (from 2:30 p.m. to 6:00 p.m.). It should be noted that PSS required that all overtime or comptime performed had to be requested and approved in advance through a “Request and Authorization” (R&A) form.

Our audit showed, however, that only one R&A dated January 8, 1997 was initiated and approved, i.e., work performed by the Administrative Officer during Saturdays for the period from January 13, to February 28, 1997, and only comptime (not overtime) was requested and approved.⁵ In our discussion with the DCA, she stated that except for this R&A, she did not direct the Administrative Officer to perform overtime. Thus, for other work performed beyond the regular hours, there was no assurance that work performed was duly authorized and necessary, or that work was actually performed.

We also noted that the work performed by the Administrative Officer was not directed to a specific objective which could not be either accomplished during the workday or postponed to the following day. This was based on our analysis of the Administrative Officer's actual duties and responsibilities. The Administrative Officer usually just continued her routine job beyond the regular hours (from 2:30 p.m. to 6:00 p.m.). Only the January 8, 1997 R&A evidenced that the work performed was directed to a specific objective.

Overtime Issue not Made Clear

The complaint for non-payment of overtime might have been avoided had PSS properly documented the Administrative Officer's assignment to an FLSA exempt position. In an October 22, 1996 memorandum, the DCA recommended that (effective on that date) the Administrative Officer would assume the additional responsibilities of Teacher Substitution and After School Programs, be reclassified from position II to III, and be given a salary increase from \$31,758 to \$35,013. The recommendation was accepted by the Acting Personnel Management Officer, Federal Programs Coordinator, and the Commissioner of Education. The DCA recommended the salary increase to compensate the additional work and responsibilities, without paying overtime. The Administrative Officer was also granted 15 percent night differential for work performed between 5:00 a.m. and 7:00 a.m. It could not be ascertained, however, whether both employer (PSS) and employee had a consensus on whether the employee was entitled to overtime or not, because no written records were made.

In any event, the Administrative Officer did not claim overtime pay during the seven month period that she had been timed in for more than 40 hours per week.⁶ She stated that she deferred the claim for overtime compensation because when they discussed her heavy workload, the DCA assured her that an assistant would be hired, or a secretary from the Instructional Division would be transferred to the DCA office. However, no hiring or transfer materialized, which prompted her to claim overtime. In our discussion with the DCA, she stated PSS preferred to maximize performance by the existing personnel rather than hire additional people. That was expressed in the October 22, 1996 memorandum where the DCA justified the Administrative Officer's reclassification by stating that the action would eliminate PSS' need to hire additional personnel

⁵ The Administrative Officer's time cards showed that she worked 33 hours on Saturdays for that period. In our discussion with her, she stated that she did not claim comptime on work performed for this and the comptime record she maintained showed that no comptime was earned for that period.

⁶ Based on the documents examined, the first formal claim was made on April 22, 1997, when the PSS Federal Programs Coordinator sent a letter to the PSS Equal Employment Officer informing her that PSS could have violated the PSS Personnel Rules and Regulations and the Fair Labor Standards Act for non-payment of overtime due to the Administrative Officer.

to handle the programs. As for the other option, the DCA stated that the Administrative Officer did not agree that her assistant be a transferee from another division.

The Administrative Officer stated that the additional work, after being reclassified to Administrative Officer III, indirectly required her to work beyond eight hours a day. She stated that had she not been overworked, she would not have worked beyond eight hours. However, since there were no instructions from the immediate superior to perform overtime, there was no evidence to show that the overtime work she performed was necessary or could not have been routinely performed during regular hours.

As a result, the Administrative Officer is not entitled to the overtime claim of \$11,867 in the absence of supporting evidence to establish her as a “non-exempt” employee and because personnel regulation requirements for overtime compensation were not met.

Subsequent Change in the PSS Personnel Regulations

Under the revised PSS personnel regulations (Regulations for the PSS Employment of Non-Certified Personnel), the Legal Counsel is required to classify an employee as either non-exempt, executive, administrative, or professional. PSS incorporated in the employment contract a certification from the Legal Counsel on the employee’s classification. This would clarify the issue of whether the employee is covered under the FLSA for overtime and comp time purposes or is exempt from such coverage. The latest employment contract signed by the Administrative Officer was prior to the implementation of this requirement.

Conclusion and Recommendation

Based on both CNMI and PSS Personnel Office policies, the “Administrative Officer III” position is classified as FLSA exempt, and thus is generally not entitled to overtime. Although the FLSA provides that certain administrative employees may be entitled to overtime, they must show that they did not meet one or more of the FLSA exempt requirements to be considered “non-exempt”. The Administrative Officer is not entitled to the overtime claim of \$11,867 because (1) there was insufficient evidence to establish her as a “non-exempt” employee entitled to overtime pay, and (2) specific requirements in the personnel regulations for overtime payment were not met. Accordingly, we recommend that PSS formally dismiss the claims of the Administrative Officer for overtime pay.

PSS Response

In his letter response on November 19, 1997 (APPENDIX B), the Commissioner of Education stated that the Administrative Officer had not presented any additional evidence to PSS that characterized her as a “non-exempt” employee entitled to overtime pay, and he therefore had decided to dismiss the claims of the Administrative Officer for overtime pay.

In discussion, PSS officials informed OPA that the Administrative Officer was transferred from the Office of DCA to Curriculum and Instruction in June 1997. After OPA’s exit conference with

the PSS officials, PSS provided documents which state that effective December 8, 1997, the Administrative Officer's work schedule would return to the normal government working hours beginning 7:30 a.m. and ending 4:30 p.m., and that she should not be entitled to night differential effective on that date. PSS changed the Teacher Substitution Program by requiring all substitution requests to be made no later than 4:00 p.m. of the day before instead of the 5:00 a.m. deadline.

OPA Comments

Based on the response we received from the Commissioner, we consider the recommendation closed.

Sincerely,

ORIGINAL SIGNED

Leo L. LaMotte
Public Auditor, CNMI

xc: Governor
Lt. Governor
Tenth CNMI Legislature (27 copies)
Attorney General
Secretary of Finance
Special Assistant for Management and Budget
Public Information Officer
Chairman, Board of Education
Press

**Analysis of the Actual Duties and Responsibilities of the PSS Administrative Officer
September 11, 1996 to April 26, 1997**

Duties and Responsibilities	Administrative or Secretarial Support	Exercise Judgment? Yes or No	Per Administrative Officer		Per DCA	
			Time Performed	Estimated Hours	Time Performed	Estimated Hours
<p>Work as Teacher Substitution Coordinator which includes:</p> <ul style="list-style-type: none"> - Receiving calls for teacher substitution, - Identifying possible cross matches (grade preferences, site preferences, area of expertise) for the substitution, - Calling teachers and arranging substitute teachers, and calling the schools no later than 7:00 a.m. to state who will be coming to their school as substitute teachers and whom they are replacing. 	Administrative Support	Yes	5:00 a.m. to 7:00 a.m.	2	5:00 a.m. to 7:00 a.m.	2
<p>Provide secretarial support and other clerical duties to the Deputy Commissioner for Administration (DCA) which include:</p> <ul style="list-style-type: none"> - Taking telephone messages and giving routine information (includes all schools from Saipan, Tinian, and Rota) - Typing correspondence, memorandum, and reports (from copy or rough draft) - Printing the stored data in the computer (correspondence, memorandum, and reports prepared by the DCA) - Checking and proofreading typewritten materials - Keeping supervisor's calendar and scheduling appointments and conferences - Collecting and selecting information and compiling data from number of sources for incorporation into final reports such as Counts of Teachers, Recruitment, and Students - Receiving, sorting, and distributing mail and other materials and documents - Photocopying documents - Answering questions and giving information - Running errands, picking up and delivering materials and documents to various departments - Filing various kinds of material and documents alphabetically, numerically, or according to subject matter 	Secretarial Support	No	7:30 a.m. to 3:00 p.m.	6.5	7:30 a.m. to 4:30 p.m. (About 30 percent)	2.4

**Analysis of the Actual Duties and Responsibilities of the PSS Administrative Officer
September 11, 1996 to April 26, 1997**

Duties and Responsibilities	Administrative or Secretarial Support	Exercise Judgment? Yes or No	Per Administrative Officer		Per DCA	
			Time Performed	Estimated Hours	Time Performed	Estimated Hours
Perform administrative responsibilities for the Teacher Substitution and After School Program which include: - Preparing Monthly Report to the DCA, Commissioner of Education (COE), and Federal Program on the number of teachers substituting - Preparing Biweekly Summary Time Sheets of the substitute and after school teachers, and the payroll amount due - Preparing Biweekly Report to the DCA, COE, and Federal Program detailing the amount of pay differentials expended by activity (<i>i.e.</i> , after-school tutorials, intercessions, Saturday school, interscholastic coaching and sports, counseling, summer school, etc.) at each school - Receiving calls of teachers who have complaints of not receiving payment or are submitting their names for substitution - Following up payments or making inquiries	Administrative Support	Yes	3:00 p.m. to 6:00 p.m.	3	7:30 a.m. to 4:30 p.m. (About 70 percent)	5.6
					4:30 p.m. to 6:00 p.m.	1.5
TOTAL				11.5	11.5	

Summary:

Type of Work	Per Administrative Officer		Per DCA	
	Estimated Hours	%	Estimated Hours	%
Secretarial Support	6.5	57	2.4	21
Administrative Support	5.0	43	9.1	79
Total	11.5	100	11.5	100

Note: Appendix B which contains the response of the Commissioner of Education was intentionally omitted from this electronic version of the report to reduce the file's size. A copy of the response is available upon request at the Office of the Public Auditor.

