



***SCI FOLLOW-UP REPORT***

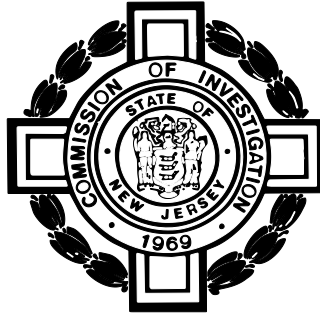
**THE BEAT GOES ON AND ON**

**Waste and Abuse in  
Local Public Employee  
Compensation and Benefits**

***State of New Jersey  
Commission of Investigation***

***February 2020***

*State of New Jersey*  
*Commission of Investigation*



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February 19, 2020

Governor Phil Murphy

The President and Members of the Senate

The Speaker and Members of the General Assembly

The State Commission of Investigation, pursuant to N.J.S.A. 52:9M, herewith submits for your information and review a report of findings and recommendations stemming from an investigation of waste and abuse in local government employee compensation and benefits.<sup>1</sup>

Respectfully,

Handwritten signature of Joseph F. Scancarella in black ink.

Joseph F. Scancarella

Chair

Handwritten signature of Rosemary Iannacone in black ink.

Rosemary Iannacone

Commissioner

Handwritten signature of John A. Hoffman in black ink.

John A. Hoffman

Commissioner

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<sup>1</sup> Commissioner Robert J. Burzichelli abstained from voting for the approval of this report.

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## SUMMARY

Over the past decades, the State Commission of Investigation repeatedly has exposed waste and abuse in local government employee compensation and benefits and revealed how these questionable, and often hidden, payments have cost New Jersey taxpayers millions of dollars each year. Along with those findings, the SCI has also presented sensible recommendations for statutory and regulatory remedies aimed at providing significant tax savings.

The Commission last examined these matters in a 2009 report that revealed, among other things, how inadequate caps on the accrual and the cashing in of unused accumulated sick leave sometimes led to payments at retirement ranging well into six figures.<sup>1</sup> That investigation also identified a host of other dubious compensation arrangements provided to retiring local public employees, including various forms of so-called “terminal leave,” some of which allowed workers to stay on the public payroll at full salary and benefits without showing up for work – in some cases for up to a year – prior to retirement.

Not long after the Commission’s last inquiry into this area, a state law was enacted that prohibited any local government employee hired after 2010 from collecting more than \$15,000 for unused sick time at retirement – the same limit that applies to state government employees.<sup>2</sup> But a bill that would have gone further, and capped *all* local employees at that amount – a measure that was unanimously approved by both houses of the Legislature – was conditionally vetoed by then-Gov. Chris Christie, who sought to end the payouts entirely.<sup>3</sup> While the 2010 law was clearly a step in the right direction, it will take nearly a generation – when those hired since its enactment retire – before it has any discernible financial impact.

Outside of that law, the responsibility for making changes to local employee benefit practices has remained at the discretion of the individual government units. In the past decade, numerous municipalities, authorities and other local government entities across New Jersey adopted restrictions that went beyond the unused-sick-leave time limits set by state law. Others ended wasteful and excessive compensation payments, including some first exposed in the 2009 report. Yet, there were also local entities that did little to rein in extraordinary perks for public employees, and some that authorized loopholes enabling employees to circumvent certain benefit restrictions.

These are among the findings of an SCI follow-up inquiry into the current status of local public employee compensation and benefit practices. The Commission has found that many of the problematic practices identified previously, such as generous payments for unused leave and taxpayer-financed days off for patently personal events like weddings or Bar Mitzvahs, persist.

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<sup>1</sup> See report, *The Beat Goes On*, December 2009.

<sup>2</sup> N.J.S.A. 40A:9-10.4 and N.J.S.A. 11A:6-19.2

<sup>3</sup> The legislation conditionally vetoed by Gov. Christie was S-2220 in the 2010-2011 legislative session.

To reach these conclusions, investigators examined relevant employment records, policies and contracts in 50 local government units, including municipalities, county governments and authorities across the State. While this represents a small sampling of the many governmental entities in New Jersey, the Commission was careful to ensure that it included units of various sizes from different regions across the State.

In most cases, the benefits arrangements for local public employees are awarded through collective bargaining and carry the force of contracts that often apply only to select individuals to the exclusion of others. In many jurisdictions, certain local public employees are subject to stringent benefit limits while others who share the same government payroll are not. Some of these agreements set forth provisions in which private personal interests prevail over those of the taxpaying public.

The Commission found that terminal leave – particularly the type that rewards employees with cash bonuses at retirement – remains a huge expense for many local governments, forcing some to make difficult financial choices in search of adequate funding. Jersey City, for example, which paid out \$8.1 million in terminal leave to retiring municipal workers in 2019, was among several municipalities that resorted to issuing bonds for millions of dollars to cover such payments – certainly not a sustainable long-term solution. In the City of Paterson, which bonded for roughly \$24 million over the past nine years to cover terminal leave payments, city officials recently scrapped plans to clean-up a local park and to buy new vehicles for the public works department – projects that could benefit the entire community – in order to foot the bill for retirement payouts.

While many local units have scaled back or phased out longevity payments for more recently hired employees, the Commission discovered many that still provide this perk – in some cases adding up to 18 percent annually on top of a worker’s base salary. In some municipalities, longevity pay counts toward an employee’s pensionable salary, boosting the amount used to calculate the payment that government retirees receive from New Jersey’s tax-payer funded pension system.

On a positive note, the Commission’s examination revealed there were multiple local government units that adopted restrictions for unused sick time payments that are far stricter than the \$15,000 limit set by state law for those hired after 2010, including the Borough of Seaside Park, which ended unused sick leave payouts for all employees entirely. However, the Commission also identified several other entities that permitted local public employees to cash in unused sick time on an annual basis, enabling some workers to exceed the limits set at retirement in the span of a few years.

It is simply absurd that, more than 20 years after the Commission first sounded the alarm about excessive compensation and questionable perks for public employees, these practices

remain the norm in many areas.<sup>4</sup> In a state where local property taxes escalate annually – the average homeowner in New Jersey paid \$8,767 for local property taxes in 2018 – taxpayers should not have to fund outsized retirement bonuses or give checks to workers who were fortunate enough not to need their allotted sick leave.<sup>5</sup>

The results of this follow-up inquiry make plain that the responsibility for reining in questionable public employee benefit and compensation practices should not primarily rest with the local government entities themselves. While the improvements achieved in this realm by individual entities are laudable, the decision on whether to gain control of excessively costly public-employee benefits should not remain hostage to New Jersey’s adherence to home rule or any other provincial constraint. As the Commission concluded in its prior investigation into these matters, any meaningful, balanced and equitable reform in this area requires a systemic approach.

Echoing recommendations made before by this agency, the Commission again urges state leaders to step up and address this costly and entirely fixable problem. To that end, the Commission recommends resolving this issue, once and for all, by creating uniform standards that set the terms of employment, compensation and benefits for local public employees. The most expeditious way to do so is through the development of a statutory framework that explicitly sets forth reasonable limits for vacation and sick leave as well as for retirement-related payment arrangements. It should also define the narrow circumstances in which any additional pay, such as bonuses, stipends, and any other special compensation, can be awarded, and require that local units adhere to a uniform set of caps for any such payments.

Further, the Commission reiterates the recommendation that terminal leave – in whatever form it may take – be eliminated for all public employees. Terminal leave payments, particularly the type that awards cash bonuses worth up to three months’ salary on top of unused sick or other leave time, are luxuries that taxpayers can no longer afford. Some local units have borrowed money or jettisoned capital improvement projects just to pay for these bonuses. In addition, rules that govern New Jersey’s pension systems should be changed to prohibit annual longevity bonuses from being factored into an employee’s pensionable salary. This additional compensation inflates the amount a retiree collects in monthly pension payments and ultimately escalates costs for all New Jersey taxpayers who fund the public pension systems.

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<sup>4</sup> See SCI report, *Pension and Benefit Abuses*, December 1998.

<sup>5</sup> The figure cited represents the average cost of a total residential property-tax bill for a New Jersey homeowner in 2018, according to data from the state Department of Community Affairs.

## KEY FINDINGS

### Excessive Benefits and Payouts

#### *Terminal Leave, Severance and Other Retirement Payments*

In its 2009 report, *The Beat Goes On*, the Commission found that the practice of rewarding employees with various forms of terminal leave, severance payments, and other bonuses at retirement is open to abuse due to lack of uniform standards and payout limits.

This follow-up inquiry revealed that these pricey retirement arrangements continue to be a major financial burden in many communities, and in some local units there appears to be no end in sight. Additionally, the lack of universal agreement on how to define and cap these payments – which vary from town to town, and sometimes even differ among employment groups within the same government unit – makes it difficult for the public to understand exactly how these payments work and how much they cost.

For instance, some local governments define terminal leave as a payment to retiring employees that includes all accumulated unused sick, vacation and other leave earned by the worker. Meanwhile, other local employers permit workers to annually earn a set number of days for terminal leave – above and beyond other earned leave time – the cash value of which goes toward a bonus at retirement. Other government entities improperly and inaccurately label these payouts as “buyouts” or “severance pay.”

In the past, the Commission reported that some public workers used terminal leave to remain on the public payroll without showing up for work in the weeks or months before retirement. During this follow-up inquiry, investigators found it was more common for retiring employees to collect cash rather than take paid time off before departing the public workforce.

With a limited tax base and few options to bring in more revenue, the City of Paterson is among the New Jersey municipalities hit the hardest by terminal-leave costs, paying out approximately \$12 million to retirees for this purpose in the last two years alone. Without enough cash-on-hand to finance these payments, city officials bonded for more than \$24 million over the past nine years to help bridge the gap. That’s in addition to another \$1.7 million raised through local property taxes in the last fiscal year that went toward terminal leave payments for retiring employees.

The city’s fiscal outlook does not look any brighter in the upcoming year. Paterson is currently facing a \$9 million budget deficit, which includes \$5 million earmarked for terminal leave payouts. Borrowing money to pay for retirements, however, will no longer be an option. The state Department of Community Affairs, which has some fiscal oversight of the city’s finances due to its dependence on State aid, told city officials it will not authorize further bonding.<sup>6</sup> Now,

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<sup>6</sup> In 2019, DCA provided \$29 million in transitional aid to Paterson to help balance the city budget.



the city must go to the negotiating table with the various collective bargaining groups to see if it can hammer out a deal to phase out terminal leave, an effort that thus far has eluded it.

Under current contract terms, Paterson is obligated to make terminal-leave payments to retiring police officers and firefighters that are equivalent to approximately two to three months of base salary, depending on years of service.<sup>7</sup> That means an employee making \$100,000 a year could receive a terminal-leave check at retirement worth approximately \$20,000 to \$25,000, in addition to other payment(s) for unused vacation and compensatory time. Terminal leave is not available to other unionized blue- and white-collar workers in the city, but employees who retire from those job titles with at least 25 years of service receive bonuses equal to the cash value of 80 days of sick leave.

Jersey City is another North Jersey community grappling with large terminal-leave payouts. While it is in better shape financially than many of its neighbors, Jersey City still lacked adequate cash-on-hand to cover employee retirements and turned to borrowing money – floating \$54 million in bonds in the last five years. Retirement payouts cost the city’s taxpayers \$8.1 million in 2019 and are on pace to be as costly in 2020 with 95 firefighters alone eligible for retirement.

For many years, Jersey City granted generous overall benefit terms to employees before recently scaling back some of those perks, including tightening unused sick-leave time redemption limits for non-union municipal workers. Additionally, in the most recent contracts, the city administration and the police and fire unions agreed to eliminate terminal leave for any employee hired by those departments after January 1, 2013. Despite such reforms, the city will still face substantial bills for terminal leave for at least the next 15 to 20 years. Under current contract terms, all police hired before August 7, 1996, earn five days of terminal leave for each year of service, which entitles an officer with a 20-year service career to a payment for 100 days of terminal leave at retirement. Police hired after that date earn three days each year.<sup>8</sup>

In addition to this continuation of large payouts for terminal leave, the Commission once again discovered instances in which local governments doled out tens of thousands of dollars to employees for “severance” pay at retirement. In Lodi Borough, the police contract does not explicitly mention severance payments. Rather, the contract contains a “Past Practice Clause” which expressly provides that unit members enjoy benefits not specifically set forth in the agreement. In this case, it is the Borough’s long-time practice of rewarding all police officers with three months’ severance pay at retirement.

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<sup>7</sup> The amount of terminal leave paid to police and firefighters hired after 2016 was reduced by 220 hours in the last negotiated contract.

<sup>8</sup> Similar terms apply for Jersey City firefighters.

In 2009, when Borough administrators balked at continuing with the payments in the cases of three retiring police officers, the local police union filed a grievance with the state Public Employment Relations Commission (PERC), an independent panel that settles public-labor disputes. The PERC ruling effectively stated that the municipality was required to make the payments, both then and in the future, because it had already been doing so. The arbitrator ruled that the financial hardship the payouts inflicted on the municipality were irrelevant to its contractual obligation.<sup>9</sup>

Elsewhere, the Commission's review of local employment contracts revealed an exceedingly generous provision that enables some local public employees who work for more than 20 years for the municipal government in Ocean City to collect retirement bonuses worth 50 percent of their salaries. The contracts also permit department heads and certain management/professional personnel who retire from the city with as little as 10 years of service to collect bonuses worth up to 40 percent of the worker's salary.<sup>10</sup> Furthermore, management/professional employees hired before December 31, 1999 and department heads – regardless of date of hire – qualify for bonuses equal to 35 percent of their salaries after completing just five years of service with Ocean City.

Some entities whose generous policies for retirement pay were criticized in the SCI's 2009 report unabashedly continue to engage in the same questionable practices. Emblematic of these ongoing taxpayer-subsidized giveaways is the whopping \$599,877 payout – including \$119,401 in terminal leave – handed to the retiring police chief of Englewood Cliffs in 2019.<sup>11</sup> Indeed, all retiring employees in that Bergen County community qualify for retirement cash bonuses ranging in value from two to six months' pay depending on years of service. The same extravagant benefit practices also persist at the Pennsauken Sewerage Authority, a small quasi-independent entity in Camden County. It gives severance pay equal to three months' salary to all managers when they resign, retire or separate from the Authority.

### ***Annual Sellbacks of Unused Leave***

The Commission found that while some municipalities control the amount of unused sick or other leave employees may redeem for cash at retirement – in some instances, going beyond

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<sup>9</sup> PERC ruled in favor of two of the three retiring officers who filed the grievance because, based on their years of service, they met the Borough requirement that police with more than 25 years of service received terminal leave pay at retirement under a "past practice" clause. The third officer's grievance was denied because of a failure to meet the years of service requirement.

<sup>10</sup> Under Ocean City policy, department heads do not receive compensation for unused sick time. The city has capped terminal leave payments for most classes of employees at \$7,500.

<sup>11</sup> The payout was originally \$673,540 but the amount was reduced by \$82,662.30 as a result of a disciplinary action which deducted 90 days of pay from the total.

the limit set by state law – those restrictions have been rendered ineffectual by practices that allow workers to cash in unused time during the years in which they are actively employed.

A Commission analysis identified multiple local public employees who, in the span of just a few years, had already collected cash through annual sellbacks that exceeded the amount the worker would be allowed to receive at retirement, effectively circumventing the locally-set limit. In a handful of municipalities, certain local employees take advantage of these sellbacks nearly every year, earning themselves a *de facto* annual bonus worth thousands of dollars.

In Lodi Borough, for example, Commission investigators found it is common practice for numerous members of the police department to cash in unused leave time each year. Under the police contract, officers receive 15 days of sick leave annually – the same amount that, if unused, may be sold back each year for cash. Records reviewed by the Commission revealed that, typically, more than a dozen actively employed officers in Lodi sold back unused sick leave each year from 2013 to 2018 at a combined cost to local taxpayers of nearly \$822,000.

The amount Lodi police officers may collect for unused sick time at retirement, which is set by contract, varies based on the date of hire. Officers hired before 1992 may collect payment for up to 220 days of accumulated sick leave at retirement. The rules are more restrictive for police personnel hired between January 1, 1992 and July 1, 2013, who may collect no more than 25 percent of their salaries in unused sick leave at retirement. Those hired after 2013 may not collect more than 15 percent of the employee's salary in unused sick leave at retirement. Those caps, however, are easily circumvented by cashing in unused time on an annual basis.

A Commission analysis of this annual redemption of unused sick leave revealed that several Lodi police officers had already exceeded the amount they would be entitled to collect at retirement through yearly sell-backs between 2013 and 2018. One officer who steadily cashed in sick leave time between 2013 and 2018 collected a total of \$47,746. That amount already exceeds what that officer would be entitled to collect in unused sick time at retirement by more than \$7,000, under the formula set forth in the local police union contract.

The Commission identified at least two other Borough officers who collected payment for unused sick time between 2013 and 2018 worth more than \$40,000, exceeding the payouts those officers would be eligible to receive at retirement by several thousand dollars. In the meantime, these employees may continue to accumulate sick leave until retirement.

Further, Lodi also allows officers to sell back some unused holiday leave at a premium on an annual basis. The contract gives police 13 paid holidays annually. It permits each officer to sell back two 12-hours days for a rate equal to time and a half of the hourly rate. For the remaining holidays, the officer has the option to cash those days in at regular straight time. Commission investigators determined that between 2013 and 2019, these holiday sell-backs cost Lodi taxpayers nearly \$490,000.

Brick Township in Ocean County also permits employees to trade in unused leave for cash. Between 2011 and 2019, Brick paid out \$6.6 million in accumulated sick and vacation leave to 197 employees. The recipients of those payments included more than 50 employees who collected amounts totaling more than \$50,000 apiece and seven employees who each amassed more than \$100,000 through sellbacks.

All municipal employees in Brick are eligible to cash in accumulated sick and vacation time on an annual basis. The number of days eligible for redemption and the dollar value paid for the earned time varies among different job titles. While the employment contracts for the township's four collective bargaining units set the terms for unionized employees, municipal policy dictates the terms of the sell-backs for unclassified workers. Under that policy, unclassified workers may sell back up to a maximum of 35 days each year – including vacation time – for 50 percent of the monetary value of the leave time.

Although the township adopted a policy to cap lump-sum payments for unused sick time at retirement at \$7,500 per employee for those hired after 2005, the Commission found that local employees hired since then could easily surpass the limit by selling back time on an annual basis.

Another Ocean County municipality, Toms River, banned cash payments for unused sick leave at retirement for employees hired since 2014 and capped such payments for accumulated leave at \$15,000 for nearly all other employees, except for police hired before 2010.<sup>12</sup> Despite those limits, Toms River permits its employees to sell back unused sick and vacation time – albeit with some conditions – each year. These annual sellbacks cost the township's taxpayers nearly \$731,000 between 2014 and 2018 and have had the effect of thoroughly undermining the limits for payouts at retirement.

## **Health-Benefit Waiver Payments**

In New Jersey, many local public workers are eligible to collect annual bonuses – worth a maximum of \$5,000 – for waiving health care benefits provided by the local government unit that employs them. These bonuses, given at the discretion of a municipality, can carry a combined cost of more than a million dollars in some larger communities.

Local government entities and school districts are authorized under state law to provide these health-benefit waiver payments, which are calculated based on what the employer would save as a result of the employee forgoing the taxpayer-subsidized medical insurance benefit. Under the state law that authorizes them, the payments may not exceed 25 percent of the amount to be saved by the local employer, or \$5,000, whichever is less.<sup>13</sup>

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<sup>12</sup> Toms River police officers hired before 2010 may collect up to 130 days of accumulated sick time as terminal leave at retirement.

<sup>13</sup> N.J.S.A. 52:14-17.31a and N.J.S.A. 40A:10-17.1

The decision as to whether or not to offer these incentive bonuses is solely up to the local governing unit. The payments are statutorily prohibited from being subject to collective bargaining. To qualify for the bonus, employees must be eligible for other health coverage, either obtained on their own or as a covered dependent.<sup>14</sup>

No such bonuses are provided to state government employees who waive medical and prescription drug coverage provided under the State Health Benefits Program.

The Commission found that the City of East Orange spent more than \$1 million for health-benefit waivers between 2015 and 2019. The 50 employees of the Passaic Valley Sewerage Commission (PVSC) who elected to waive health coverage in 2018 each received checks worth an average of \$4,187 in 2018, costing PVSC a total of \$209,357. Jersey City spent \$1.6 million on waiver payments in 2018 alone.

In 2016, the state Department of Community Affairs' Division of Local Government Services advised local governing bodies that offer payments in lieu of health benefits to annually review their policies and the impact on local budgets to determine if such payments remain "fiscally prudent." The Division's Local Finance Notice 2016-10 stated the following:

*Offering payments in lieu of health benefits often functioned as the only practical means by which local units could achieve a waiver of coverage and thus save taxpayer dollars. However, the increased amount that employees must now contribute under the law will often be a sufficiently strong incentive for them to waive coverage...*

In some instances, this type of fiscal prudence review made a difference. The Union County community of Scotch Plains, for example, curtailed such waiver payments in 2016 after determining they were no longer cost-effective. Under Scotch Plain's previous healthcare coverage opt-out program, employees who waived medical benefits for family coverage were eligible to receive up to \$4,000 a year. The township paid out more than \$200,000 in waiver payments to employees between 2012 and 2016 before eliminating the bonuses.

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<sup>14</sup> If the employee's alternate coverage is also under the State Health Benefits Program the employee cannot receive a waiver payment.

## Longevity Payments

The Commission found that many local governments continue to pay longevity bonuses that, in some cases, have boosted active employee compensation by as much as 15 to 18 percent annually. This extra sum – basically a raise simply for staying on the payroll over time – is given in addition to regular salary adjustments.

Longevity payments are largely discretionary and are handled differently by each local government. Some give employees a percentage of annual salary based on years of service while others provide a set dollar amount. In recent years, numerous local public employers have begun to scale back these payments or have eliminated them altogether due to fiscal constraints. Still, there are plenty of communities where this practice persists.

Some municipalities permit longevity payments to be included as part of the employee’s “pensionable salary,” which is the total salary amount used to calculate how much the worker will receive after retirement. This extra pay can have a substantial upward impact on the pension payment for which a retired employee is eligible and can present long-term additional costs for taxpayers.

For example, under the current police contract, an officer in the City of Paterson with more than 24 years of service and an annual salary of \$100,000 is eligible to collect another \$18,000 each year for longevity pay.<sup>15</sup> Under the formula for calculating pension payments for the Police and Firemen’s Retirement System (PFRS), that officer would be eligible for a \$59,000 annual pension. If the payment were based solely on the employee’s base \$100,000 salary, the annual pension would be \$50,000. For an employee who retired at age 50 and collected a pension for 25 years, that extra longevity compensation would add an extra \$225,000 to the total amount collected by the retiree.

This practice is permissible under PFRS rules. Longevity pay is considered pensionable as long as it is included as part of each paycheck for all employees in the same collective bargaining unit from the time they first receive the compensation.<sup>16</sup> Any form of compensation not included in an employee’s base salary during some of the term of the employment but added at a later point is not permitted. For example, any extra compensation in the form of a lump-sum payout may not be factored in as part of the pensionable salary.

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<sup>15</sup> Under the Policemen’s Benevolent Association contract, police hired in Paterson before August 2016 get a maximum of 18 percent annually for longevity pay after 24 years of service.

<sup>16</sup> Employers’ Pension and Benefits Administration Manual for the Police and Firemen’s Retirement System.

## **Other Questionable Employee Benefit and Compensation Practices**

Aside from the above findings, the Commission found that many local entities continue to engage in a range of other questionable benefit and compensation practices that reward employees with paid time off or cash payments for such things as perfect attendance or for donating blood. Some municipalities allow their employees to take birthdays as paid days-off.

At the Long Branch Sewerage Authority, all employees remain eligible for an extra day's pay if, on an annual basis, they are not involved in any accident that results in a cost to the Authority and/or its insurance carriers. Some employees in the City of Hoboken, which eliminated many other questionable benefit practices in recent years, still receive a paid day-off for donating blood or participating in a wedding or Bar Mitzvah. The Commission also found that in the Borough of Maywood, all police officers of the small Bergen County community are gifted with their service weapons at retirement.

Further, investigators found numerous instances in which local governments reward public employees with bonuses or additional time-off just for showing up and not using sick time. In Willingboro, Burlington County, certain employees may earn up to five additional paid personal days for using less than four sick days during the prior year. Incentive payments of \$1,500 are given to police officers and firefighters in the City of Elizabeth who do not use a sick day for an entire calendar year. Other local public employees in that Union County municipality who use no sick time all year get \$550. In Franklin Township, Somerset County, police officers who accumulate more than 150 hours of unused sick time can redeem that leave time for 85 percent of its value. Any money due to the officer is deposited into the employee's Township-sponsored deferred compensation account until reaching the maximum amount of \$6,000 per year.

### **A Local Reform Undone**

If strict terms delineating benefits and compensation for local public employees were formally memorialized in state law it would prevent local entities from engaging in the type of questionable activity the Commission discovered in the Hudson County Town of Harrison where officials – to the benefit of an employee – selectively reversed a municipal policy prohibiting payments for unused sick leave.

In its 2009 report, the Commission reported that in Harrison – which had a long history of awarding large payouts for unused leave to retiring employees – municipal officials had reached an arbitration agreement with the local police union that gave officers unlimited annual sick time in exchange for eliminating lump-sum payments for accumulated time at retirement. Under the arrangement, all unused sick leave accumulated by police prior to January 1, 2005 would be held in a “bank” against the future option that the Town could once again permit municipal personnel to cash in the unused leave.

The Commission's follow-up review of Harrison's benefit practices and employment contracts revealed that local officials, in fact, did revive its old policy – at least for the former police chief. Nine months before the chief's planned retirement, Harrison agreed to renegotiate the terms of his contract to include payment for unused sick time. While the bulk of the \$90,183 terminal leave payment the chief received was for unused vacation time, it also included \$15,000 for unused sick time.

The prohibition against cashing out unused leave time at retirement, meanwhile, remains in force in the contracts for Harrison's rank-and-file officers.

This example raises questions as to how meaningful a reform can be if it is so easily subverted through a contract re-negotiation. If limits for leave and for the cashing-in of any accumulated time were established by statute statewide, local governments likely would be unable to unilaterally upend such a restriction.



## Recommendations

More than 20 years after the Commission first exposed waste and abuse in certain elements of public-employee pension and benefit programs, a re-examination of these issues has revealed the enduring nature of many problematic practices. Along with shedding light on such activities, the SCI repeatedly has made reasonable and practical recommendations to establish greater fiscal prudence and fairness within the ranks of the public workforce as well as greater accountability and transparency at all levels of government. Yet, many of those calls for reform have gone unheeded.

While there has been some progress on a selective basis to rein in costly perks and inappropriate compensation, this effort has only been narrowly focused in a handful of municipalities or directed at only a particular segment of the local public workforce. Furthermore, many restrictions on benefits were phased in over an extended period of time, signifying that it will be decades before any tangible and salutary financial impact is produced.

The findings of this follow-up inquiry amply illustrate that the current approach – essentially allowing individual government entities themselves to determine how to address local public employment issues – is only working to the detriment of taxpayers. Piecemeal action by local governments, while commendable, is not sufficient. Meaningful and balanced reform in this area requires a far more comprehensive response, and the State must take the lead to get the job done.

Based upon the investigative record, the Commission makes the following recommendations for systemic reform:

### **1. Establish Standards for Local Government Employment Practices**

Legislation should be enacted to create a comprehensive statutory framework to explicitly address employment practices at the local government level in New Jersey. As noted by the Commission on numerous occasions, the broad discretion exercised by local governments to set the terms of employment, compensation and benefits for local public employees – including vacation and sick leave and retirement-related payment arrangements – has produced an array of costly and sometimes inequitable benefit packages.

The Commission urges the Legislature to conduct a thorough review of local government employment, compensation and benefit practices in order to establish reasonable systemic standards that will protect both the livelihood of the local public workforce and the integrity of the public treasury.

## **2. Establish Uniform Limits on Employee Leave**

Participation in any of the various state pension plans should, at a minimum, be conditioned upon the acceptance by all governmental entities of the basic benefit provisions and policies maintained for employees at the State level, as follows:

- Public employees at all levels should receive no more than 15 paid sick days per year. At retirement, payment for accumulated unused sick time should be capped at \$15,000 – unless the Legislature and Governor determine that a lower sick-leave payout, or none altogether, is in order for all government employees.<sup>17</sup>
- Public employees at all levels should adhere to the State limit of a maximum of 25 paid vacation days per year after 20 years of continuous service. No more than one annual allotment of vacation time should be carried forward by any public employee from one year to the next.
- All forms of non-traditional leave, such as paid days off for participation in a wedding or Bar Mitzvah, etc., should be eliminated. Public employees at all levels of government should be required to adhere to the established schedule of holidays and administrative time-off authorized for state government personnel.
- As with state employees, no public employee at any level of government should be permitted to cash in unused accumulated sick leave at any time prior to retirement.

## **3. Eliminate Terminal Leave/Severance Payments at Retirement**

During the course of this follow-up inquiry, investigators found that some localities provide retiring employees with bonuses worth up to three months' salary. Each municipality refers to these payments differently, with some terming the extra compensation "terminal leave" or "severance pay." These costly payouts are doled out on top of any accumulated unused sick or vacation time. While severance and employment-separation arrangements, when properly and fairly negotiated, can produce savings over the long-run – particularly with regard to early retirement programs and in cases where employees receive a measure of financial inducement to vacate positions to be eliminated – the practice is open to abuse for lack of uniform standards and payout limits.

- The Commission recommends that terminal leave, in whatever form it may take, be eliminated for all public employees.
- Any statutory framework created by the Legislature to set the terms of local public employment should define as narrowly as possible any circumstances under which bonuses, stipends, separation payouts or other special compensation can be awarded. Local governments should be required to adhere to a set of caps and

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<sup>17</sup> There are numerous bills pending in the Legislature that would lower the maximum sick leave payout at retirement for all public employees, including one that would restrict it to no more than \$7,500. That measure (A-1605) is sponsored in the Assembly by Speaker Craig Coughlin, D-Middlesex, Assemblywoman Pamela Lampitt, D-Camden, and Assemblywoman Holly Schepisi, R-Bergen.

restrictions on such payouts. Further, the terms and conditions of any such compensations should be publicly disclosed.

#### **4. Remove Longevity Compensation from Pensionable Salary**

While some local governments have cut back or phased out longevity bonuses, this additional compensation continues to boost employee salaries in many municipalities. The Commission's review identified local public entities where longevity pay boosted the salaries of employees with more than 20 years of service by as much as 15 to 18 percent annually – outside of regular raises.

Compounding the long-term financial impact of these payments is that many local entities permit this additional compensation to count as part of the employee's pensionable salary, which boosts the amount used to calculate the worker's annual pension payment. An SCI analysis found that by including the additional 18 percent on top of the salary for an employee who made \$100,000, enabled the worker to collect a \$59,000 annual pension – \$9,000 more than if the salary alone had been used. If that inflated pension were to be collected for 25 years, it would mean an additional \$225,000 in compensation for the employee.

Rules governing New Jersey's public pension systems permit longevity pay to be included as part of public workers' pensionable salary under certain conditions, including whether the additional compensation was paid along with employee's regular salary from the time of initial employment. The Commission recommends that these rules be changed to remove longevity compensation from the salary upon which the pension payment is calculated. Only the base salary earned by the government employee should be used to calculate the employee's pension.

#### **5. Review the Economic Feasibility of Paying Health Care Opt-Out Waivers**

Local government entities and school districts are authorized under state law to provide incentive payments to those employees who decline employer provided health and prescription coverage. These incentive payments, calculated based on what the employer saves as a result of the employee not taking publicly subsidized medical insurance, may not exceed 25 percent of the amount saved by the local employer, or \$5,000, whichever is less.

Given the fact that local government employees now pay a portion of their health benefits, there is less need to offer an incentive to discourage a worker from taking government-provided health coverage. It is also noteworthy that state government employees receive no bonus for declining medical or prescription coverage.

The Commission recommends that local government units that pay bonuses to employees who decline government provided health insurance evaluate their policies to determine whether

it still makes economic sense to continue such payments or if it represents an unnecessary expense to local taxpayers.

**N.J.S.A. 52:9M-12.2 provides that:**

- a. The Commission shall make a good faith effort to notify any person whose conduct it intends to criticize in a proposed report.*
- b. The notice required under subsection a. of this section shall describe the general nature and the context of the criticism, but need not include any portion of the proposed report or any testimony or evidence upon which the report is based.*
- c. Any person receiving notice under subsection a. of this section shall have 15 days to submit a response, signed by that person under oath or affirmation. Thereafter the Commission shall consider the response and shall include the response in the report together with any relevant evidence submitted by that person; except that the Commission may redact from the response any discussion or reference to a person who has not received notice under subsection a. of this section.*
- d. Nothing in this section shall be construed to prevent the Commission from granting such further rights and privileges, as it may determine, to any person whose conduct it intends to criticize in a proposed report.*
- e. Notwithstanding the provisions of R.S. 1:1-2, nothing in this section shall be deemed to apply to any entity other than a natural person.*

The following material was submitted pursuant to those statutory requirements.

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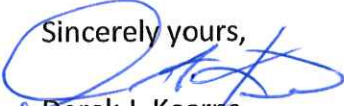
STATE COMMISSION OF  
INVESTIGATION

February 1, 2020

Dear Mr. Mink

Attached herewith is an affidavit outlining my response to the report from the New Jersey State Commissions of Investigations dated January 23, 2020.

Sincerely yours,

  
Derek J. Kearns

## AFFIDAVIT OF DEREK J. KEARNS

I, Derek J. Kearns, of full age, being duly sworn according to law, upon my oath depose and say:

1. This affidavit is submitted in response to the letter from the New Jersey State Commission of Investigation dated January 23, 2020 concerning the proposed report to be issued relative to the investigation involving public employment benefits. A copy of that letter is annexed hereto as Exhibit "A".

2. Based on the excerpt included with your letter, it is my understanding that the Commission intends to issue a report criticizing my conduct in receiving a public employment benefit of \$15,000.00 in connection with my retirement as Police Chief for the Town of Harrison.

3. I believe that any criticism directed toward me in receiving the aforementioned public employment benefit is misguided and unwarranted for the reasons hereinafter set forth below.

4. The \$15,000.00 paid to me by the Town of Harrison was part of contract negotiations with the Town over several years, in consultation with the Department of Community Affairs (DCA), to provide compensation for unused sick time.

5. The proposed report to be issued by the Commission of Investigation fails to mention that I had accumulated a total of 199.5 sick days prior to my retirement, with a monetary value of more than \$100,000.00, that were stored in Town's sick time "bank" since 1999.


6. I was also advised by Paul Zarbetski, the Town Attorney, that the DCA would only approve a cap of \$15,000.00 for my "banked" sick time as this was the acceptable past practice for all state workers.

7. Criticizing me for receiving a public employment benefit of \$15,000.00 for earned and accumulated sick time is unwarranted when that benefit was properly negotiated, an acceptable practice, and duly approved by the Town's attorney and the DCA.

8. Instead of criticizing my conduct in accepting this negotiated public employment benefit of \$15,000.00, I believe it is more appropriate to praise my conduct for accepting considerably less than the \$100,000.00 that I earned in banked sick time during my long and exemplary career as a Police Officer with the Town of Harrison.


9. If the State of New Jersey Commission of Investigation is really interested in conducting investigations and publishing reports in an effort to correct costly abuses in the public employment and save the taxpayers money, the Commission may want to review unlimited sick time policies for police officers negotiated as part of the collective bargaining process in Harrison and other municipalities as those policies are far more costly and prone to abuse. During my twelve (12) year tenure as Police Chief, I had submitted numerous reports to both state and local officials outlining the exorbitant annual cost associated with excessive absenteeism related to Harrison's adoption of their unlimited sick leave policy.

10. I hereby certify that the foregoing statements made by me are true.

  
\_\_\_\_\_  
DEREK J. KEARNS

Sworn and subscribed to before me

this 1st day of february, 2020.

  
\_\_\_\_\_  
Michael T. Kearns, Esq.  
An Attorney at Law of the State of New Jersey  
(ID# 1281997)





*State of New Jersey  
Commission of Investigation*